

## **Exhibit 3**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: )

SECURITIES INVESTOR )

PROTECTION CORPORATION, )

Plaintiff-Applicant, )

vs. ) 08-01789 (SMB)

BERNARD L. MADOFF )

INVESTMENT SECURITIES, LLC, )

Defendant. )

In Re: )

BERNARD L. MADOFF, )

Debtor. )

Videotaped Deposition of BERNARD L.  
MADOFF, VOLUME II, taken on behalf of the Customers,  
before K. Denise Neal, Registered Professional  
Reporter and Notary Public, at the Federal  
Correctional Institution, 3000 Old Highway 75,  
Butner, North Carolina, on the 27th day of April,  
2017, commencing at 9:11 a.m.

\* \* \* \* \*

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4

5 \* \* \* \* \*

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1 THE VIDEOGRAPHER: This is Volume II of  
2 the deposition of Bernard L. Madoff. My name is Ken  
3 Morrison representing Veritext Legal Solutions. The  
4 date today is April 27th, 2017 and the time is  
5 9:11 a.m. This deposition is being held at Butner  
6 Federal Correctional Facility located at 3000 Old 75  
7 Highway, Butner, North Carolina 27509 and is being  
8 taken by counsel for the Customers and Trustees.

9 The caption of this case is Securities  
10 Investor Protection Corporation, Plaintiff-Applicant  
11 versus Bernard L. Madoff Investment Securities, LLC,  
12 Defendant. This case is being held in the United  
13 States Bankruptcy Court, Southern District of New  
14 York, Number 08-01789 (SMB).

15 At this time would attorneys please  
16 identify themselves and whom they represent and the  
17 witness is still under oath.

18 MS. CHAITMAN: Helen Davis Chaitman on  
19 behalf of numerous former customers.

20 MR. GOLDMAN: Peter A. Goldman on behalf  
21 of Bernard Madoff.

22 MR. SHEEHAN: David Sheehan, Baker  
23 Hostetler, for the Trustee.

24 MS. FEIN: Amanda Fein, Baker Hostetler,  
25 for the Trustee.

1                   BERNARD L. MADOFF,  
2   having been previously sworn, was further examined  
3   and testified as follows:

4                   FURTHER EXAMINATION

5   BY MR. SHEEHAN:

6           Q.   Good morning, Mr. Madoff.   How are you  
7   today?

8           A.   I'm good.

9           Q.   Good.   I want to just put something on the  
10   record because Helen was so strict with it yesterday  
11   and I agree with it, that the judge entered an order  
12   we're not supposed to mention certain people's  
13   names, and we were pretty good about that yesterday.  
14   I intend to follow it here today.

15          A.   Uh-huh.

16          Q.   In fact, I may show you some documents that  
17   I've redacted, but we're not going to get into the  
18   person involved --

19          A.   Okay.

20          Q.   -- because I expect just as you did  
21   yesterday, Helen, I want to strictly adhere to that  
22   order.   All right.   So just want to put that on the  
23   record, and you'll see the documents when we get  
24   there.   Just to put things in a little context, I'm  
25   about to show you some statements, but before I do

1 that -- in fact, some that you've seen before from  
2 Mr. Blecker; but before we do that I want to go back  
3 to a little bit of where we were yesterday because I  
4 had the chance to review yesterday's transcript and  
5 just to clarify a few things about the convertible  
6 arbitrage strategy.

7 A. Uh-huh.

8 Q. All right. One of the things that would be  
9 helpful is this -- is that it may be better with my  
10 putting it would have been, when would you receive  
11 cash in lieu of fractional shares?

12 A. Actually, you know, I can't really tell you  
13 because I didn't handle the operations side of the  
14 business. So, you know, I don't know when that was  
15 -- when that was done.

16 Q. But would it be fair to say that there is  
17 no fractional share until you sell the convertible  
18 security?

19 A. Well, it depends upon -- you know, it  
20 depends upon whether it's actually converted,  
21 whether -- whether it's just unwound or whether it's  
22 swapped. In other words, the strategies don't  
23 necessarily involve physically converting it where  
24 you would get a fractional share. There were times  
25 that the strategy is unwound where you're just



1 closing out the long and short position for the  
2 customer either through the open market or you swap  
3 it with another dealer and just swap -- swap the  
4 position. So it's only if you were actually  
5 converting it would you get the fractional share.

6 Q. Okay. Thank you. The strategy of a  
7 discount convertible --

8 A. Uh-huh.

9 Q. -- is that scalable? And what I mean by  
10 scalable is that you can take it from like ten  
11 customers and then expand it to a thousand?

12 MS. CHAITMAN: Objection to form.

13 THE WITNESS: When you say scale it, you  
14 mean -- I'm not sure what I understand what you're  
15 talking about.

16 Q. (By Mr. Sheehan) Okay. Well, let's try  
17 the reverse and under Helen's objection over there.  
18 How would you define scalable?

19 A. Well, you're not scaling. If you're -- if  
20 you're going to -- whatever you're buying, that's  
21 the most that you can actually break up. So if you  
22 bought 100 bonds, you may break that up for  
23 argument's sake into five customers. You're not  
24 scaling it. You're not -- you're not increasing,  
25 you know, the trade other than what you actually

1 bought.

2 Q. What I was focusing on was your comment  
3 yesterday when you referred to discount convertibles  
4 as freaks. Are there enough of those, I guess, is  
5 what I'm asking? Are there enough of those that you  
6 could expand and sell a lot of those?

7 MS. CHAITMAN: Objection to form.

8 THE WITNESS: Well, clearly as I said  
9 yesterday, the most -- most convertibles should be  
10 trading at a premium because in theory you would not  
11 -- you would not buy -- if you're a client, you had  
12 a choice of buying the -- you know, the convertible  
13 bond or buying the stock, if you can buy the  
14 convertible bond at a discount, then you would  
15 always want to buy the -- even if you weren't going  
16 to sell the stock.

17 In other words, if you had a choice, do I  
18 want -- I like this company. Do I want to buy, you  
19 know, the stock or do I want to buy -- and it could  
20 also had a convertible bond also and you could buy  
21 the convertible bond, which would theoretically give  
22 you the right to exchange that for stock, it would  
23 be foolish, you know, to not buy the bond because  
24 the bond gives you the protection of the coupon. So  
25 but there are times like anything else that bonds,

1 you know, do trade at discounts, you know. It  
2 depends upon people, you know, you know, they make  
3 that decision up; but, I mean, the fact is that  
4 convertible bonds sometimes trade at discounts,  
5 sometimes trade at premiums, but clearly more of  
6 them would trade at premiums than at discounts. It  
7 also, by the way, depends upon whether you leg into  
8 a trade.

9 In other words, it's a fallacy to think  
10 that you're buying the convertible bond, you know,  
11 at 10:00 o'clock in the morning and you're selling  
12 the stock at 10:00 o'clock in the morning. It's not  
13 a simultaneous transaction. Most trading that's  
14 done in convertible securities I explained yesterday  
15 is legging into it.

16 You're making a decision as to what the  
17 market is going to do at the time. That's why it's  
18 imperative that you have volatility. So and  
19 depending upon whether you think the market is going  
20 up or the market is going down, that's -- you would  
21 start one leg versus the other leg.

22 Q. Following up on legging in, was it your  
23 normal practice to buy the convertible security on  
24 one day and not buy the short on the same day?

25 A. Not sell the short you mean?

1 Q. Not sell the short. Not sell the short on  
2 the same day?

3 MS. CHAITMAN: Objection to form.

4 THE WITNESS: Sometimes yes, sometimes no.  
5 It depends upon what was available.

6 Q. (By Mr. Sheehan) If you bought the -- or  
7 sold the short the next day or day after --

8 A. Uh-huh.

9 Q. -- would that increase your risk?

10 MS. CHAITMAN: Objection to form.

11 THE WITNESS: Would it increase your risk?  
12 Yes, of course.

13 Q. (By Mr. Sheehan) And why would that be?

14 A. Because you -- if the market collapsed, you  
15 know, and the bond would go down, you wouldn't have  
16 anything on the short side of the market to hedge  
17 yourself with.

18 Q. All right. Okay. I believe that on  
19 December 20th you used this term, but what's the  
20 term VWAP stand for?

21 A. VWAP is volume-weighted average price.  
22 That's when a firm puts in a lot -- basically, it  
23 would be an institutional order where they decide  
24 they want to buy 100,000 shares or sell 100,000  
25 shares.

1           They give their order to a broker, you  
2     know, and say I want a volume-weighted average  
3     price. And the brokers, the fellow on the floor,  
4     typically the floor broker would -- would sell that  
5     out at his discretion over the course of the day.

6           And they -- they're competing against what  
7     the volume-weighted average price, you know, of that  
8     security sold during the day. We didn't do any  
9     volume. We didn't do any VWAP orders basically.

10          Q. Okay. I wrote this down so I'd get it  
11     right, so here it comes. Would it be your  
12     expectation that prices you were able to get on  
13     purchases of the convertible and sales of the common  
14     would be more favorable, less favorable or  
15     approximately equal to VWAP in those securities?

16          MS. CHAITMAN: Objection to form.

17          THE WITNESS: To VWAP?

18          Q. (By Mr. Sheehan) Yeah. To VWAP.

19          A. We didn't -- our general rule was we never  
20     did handle VWAP orders.

21          Q. All right. Did you ever apply a VWAP  
22     analysis to your trading?

23          A. No. Other -- I mean, the funds would --  
24     might do that or some of our wholesale customers  
25     would do that. We developed a system called time

1 slicing, which was -- had never been done before.  
2 We built a system that we would -- someone would  
3 give us a -- this was not part of basically an  
4 arbitrage strategy.

5           There would be someone like Fidelity would  
6 give us an order to sell 100,000 shares of stock.  
7 And what we would do is we built a system, my sons  
8 built a system where the order would be 100,000  
9 shares would go into our technology platform and it  
10 would -- they would say to us we want to sell this  
11 hundred thousand shares over a period of  
12 three-minute intervals.

13           It would go into the system. We would  
14 program the order into the system and every three  
15 minutes part of that order would come down into our  
16 system and be -- go against our market makers'  
17 quotes. And the average -- and the same strategy as  
18 a VWAP, only it turns out that the -- instead of the  
19 floor broker controlling the order, when to execute  
20 the order, it would be the client who put the order  
21 in like Fidelity were doing it.

22           It became very popular to do that because  
23 it always for the general rule, you know,  
24 outperformed the VWAP on the floor. And that was  
25 the system that we had to get the approval of the

1 SEC to build that system.

2 Q. Uh-huh, thank you.

3 A. It's called time slicing.

4 MR. SHEEHAN: Let's get out the first  
5 exhibit.

6 MS. FEIN: This was marked in the last  
7 deposition as 14.

8 MS. CHAITMAN: Thank you.

9 Q. (By Mr. Sheehan) Yeah. Mr. Madoff, you've  
10 just been handed an exhibit that was previously  
11 marked on December 20th, 2016 as Exhibit Number 14.  
12 It purports to be a 6-30-86 statement for an Arthur  
13 Blecker?

14 A. Right.

15 Q. Okay. Just take your time and look at that  
16 and then we're going to ask you a few questions;  
17 okay? Okay?

18 A. Okay.

19 Q. Okay. Directing your attention to the  
20 first entry at 6-30, 610 long 1501, do you see that?

21 A. Yes.

22 Q. What do you understand that entry to be?

23 A. It looks like a purchase of -- on 6-03 of  
24 1501 shares of Interco 46.

25 Q. Okay. What's right underneath it? It says

1 preferred. What is that referring to? Do you see  
2 that?

3 A. Preferred?

4 Q. Uh-huh. Preferred, sir.

5 A. Oh, that's just the -- it says preferred  
6 convertible, preferred series D convertible.

7 Q. Right. So then go down to --

8 A. That's the full name of -- of the --

9 Q. Okay, fine.

10 A. Uh-huh.

11 Q. Then there's two further items down that  
12 are both 6-5 --

13 A. Right.

14 Q. -- to 6-12. Could you tell us what those  
15 two entries are?

16 A. Those look like sales on the 12th at -- of  
17 the common stock.

18 Q. Okay. Now, it appears there's several days  
19 difference --

20 A. Uh-huh.

21 Q. -- between the purchase of the convertible  
22 security and the sale of the short?

23 A. Right.

24 Q. Is that something that would commonly  
25 occur?



1 A. Yes.

2 Q. And why is that?

3 A. That's part of the legging transaction.  
4 Obviously, you know, we bought the bond and then we  
5 anticipated the stock going higher. So we waited  
6 two days to sell the stock. You're at risk during  
7 those two days that it's open --

8 Q. Okay.

9 A. -- but that's what we just discussed;  
10 right?

11 Q. Right, okay. If you go on down, there's  
12 another entry on 6-12 to 6-25. Do you see that,  
13 Interco, Inc.?

14 A. Uh-huh.

15 Q. And it says fractional shares?

16 A. Right.

17 Q. Do you see that?

18 A. Yes.

19 Q. And it has a credit for it looks like  
20 \$14.18?

21 A. Right.

22 Q. Do you see that?

23 A. Uh-huh.

24 Q. When do fractional shares occur?

25 A. Well, I would assume it is -- I assume that

1 it would come when it was converted.

2 Q. I see. But if you go down to the bottom --

3 A. Uh-huh.

4 Q. -- and the positions, isn't the preferred  
5 still being held by you?

6 A. It's hard for me to read this thing.

7 It's --

8 Q. It's the same entry?

9 A. Yeah, yeah.

10 Q. All right.

11 A. Yes.

12 Q. Okay. So how could you have an entry for  
13 fractional shares if you haven't sold it?

14 A. If we haven't sold it?

15 Q. Yeah, or you haven't converted it. I'm  
16 sorry. You haven't converted the convertible  
17 security. How could you have a fractional share?

18 A. I can't give you the answer to that because  
19 I don't know what the procedure was. That's an  
20 operations department procedure of what -- of how  
21 they handled the fractional shares.

22 Q. One last question or maybe a couple more  
23 questions. See at the beginning of the debit column  
24 the price is 277 and change? See that?

25 A. Uh-huh.

1 Q. And then down at the bottom it's still  
2 showing it at 277 at the end of the --

3 A. The last positions are mark to market. At  
4 the end, those positions at the bottom are the  
5 current market price at that time. It wouldn't  
6 necessarily reflect what the market was at the time  
7 this trades. In other words, they're now -- it's  
8 showing that this is a -- that this is a long  
9 position and a short position at what the market  
10 price was at the end of the -- at the end of the  
11 month.

12 Q. Isn't it unusual that the trade and the --

13 A. No.

14 Q. -- mark to market be the same?

15 A. No.

16 Q. No?

17 A. It depends upon what the market is. If the  
18 stock didn't change, you know, I mean, you're  
19 talking about, you know, what the price of the stock  
20 is at the end of the month as opposed to, you know,  
21 when it was purchased, you know, on 6-5. So you're  
22 talking about, you know, the three-week period of  
23 time.

24 Q. Who operationally would have handled this  
25 trade?

1 A. The operation department?

2 Q. Yeah.

3 A. Well, depends upon when it was done. If it  
4 was done in 1986, it would typically be probably  
5 Annette's department. One of the -- I don't know  
6 who would -- physically would have been doing it.

7 Q. Okay. Annette or someone working for her?

8 A. Someone, you know, on that -- you know, in  
9 that area.

10 MR. SHEEHAN: Okay. Let's go -- I don't  
11 know that we've marked the next one. Have we? So  
12 let's mark it now. What's that?

13 MS. FEIN: Should we do it as Trustee 1 or  
14 do I --

15 MR. SHEEHAN: Yeah. We're going to do  
16 Trustee 1. Okay, Ellen? We're going to go Trustee  
17 1.

18 MS. CHAITMAN: Yeah. That's fine.  
19 Whatever you want to do.

20 MS. FEIN: Just two pages.

21 MR. SHEEHAN: That's fine. Why don't we  
22 do this? Why don't you mark them all together?

23 MS. FEIN: Yeah.

24 THE WITNESS: Is it warm in here now?  
25 Much warmer than today -- yesterday.

1 MS. FEIN: Yesterday was freezing.

2 THE WITNESS: I put on this shirt  
3 underneath it because I was so cold yesterday.

4 MR. SHEEHAN: Mark all of these. That's  
5 Trustee 1. This is going to be Trustee 2.

6 MS. FEIN: That will be Trustee 1.

7 MR. SHEEHAN: How should we mark this?

8 MS. FEIN: Trustee 1.

9 (Trustee Exhibit Number 1 was marked for  
10 identification.)

11 Q. (By Mr. Sheehan) Okay, yeah. All right.  
12 We're good. I apologize. Take a look at Trustee 1.  
13 This actually consists of two pages. Do you see  
14 that?

15 A. Uh-huh.

16 Q. Okay. Looking at the first page, could you  
17 -- have you had a chance to look at it?

18 A. Yeah.

19 Q. Okay. If you look down at the -- this is  
20 now for the following month. It's July 31, the end  
21 of the month '86. Do you see that?

22 A. Right.

23 Q. All right. It's again Mr. Blecker's  
24 account?

25 A. Uh-huh.

1 Q. And what is it showing as the end positions  
2 there?

3 A. Right.

4 Q. What are they showing?

5 A. It's showing him long Interco convertible  
6 preferred and short the common stock.

7 Q. So what does that mean to you?

8 A. What does it mean to me?

9 Q. Yeah.

10 A. He's still -- he still owns this -- the  
11 bond and he sold short the stock.

12 Q. And that is -- so he --

13 A. The position is still open, in other words.

14 Q. Still open from early June?

15 A. From when it was -- yes.

16 Q. All right. Do you see under the debit  
17 column again the amount of 277,309.75?

18 A. Uh-huh, right.

19 Q. Is that not supposed to be mark to market  
20 there?

21 A. It would be the market, I'm assuming, you  
22 know.

23 Q. So the market never changed from that  
24 price?

25 A. It's possible.

1 Q. Okay. Let's go to the second page if we  
2 could. Oh, what's that? It's a double-sided page  
3 on mine.

4 MR. GOLDMAN: For you.

5 MR. SHEEHAN: Yeah. Not for you, though.

6 Q. (By Mr. Sheehan) Okay. So let's take a  
7 look at that. Could you take a look at the top and  
8 tell us what you understand this statement to be?

9 A. It shows the same types of securities,  
10 Interco preferred, convertible preferred, and then  
11 there's receive and delivery of the positions.

12 Q. Uh-huh, okay. Did a conversion take place  
13 here?

14 A. I have no idea. It was either converted or  
15 it was -- it was unwound or swapped. I can't see  
16 whether it was -- if it was unwound, it would have  
17 been -- it would have been actual prices that would  
18 appear. I mean, I'm having a hard time reading this  
19 thing.

20 Q. Yes.

21 A. But it would either be unwound or could  
22 have been -- it could have been swapped. They could  
23 have exchanged the positions to close them out  
24 without going into the open market. We can swap  
25 them with another dealer or we can swap them with a

1 bank and so on.

2 Q. Can you explain on the first statement that  
3 we looked at that was -- it was number 14. It  
4 showed that there was a -- the fractional shares are  
5 shown there?

6 A. Right.

7 Q. Can you explain why those appeared six  
8 weeks before?

9 A. I told you I'm not sure how they handled  
10 the fractional -- the fractional shares. They  
11 might -- for all I know is they might because  
12 they're planning to convert it and they know they're  
13 going to get a fractional share, they credit the  
14 account with the fractional share.

15 I'm not familiar with the operations side  
16 of the business, so I don't know how they physically  
17 handle that. And also how they might have handled  
18 it in 1986 might be different than how they handled  
19 it, you know, at a later date because there were  
20 different operations people and we had different  
21 systems.

22 Q. I guess the question I have is how would  
23 you get the price and the fractional share six weeks  
24 before you converted it?

25 A. It depends upon whether -- I don't know how



1 they handled the fractional shares. So they might  
2 be getting -- they value the fractional share and  
3 what the price was at that time or, you know, I  
4 don't know how they determined that.

5 Q. Okay. The next document, this is a  
6 different, TRW?

7 MS. FEIN: Uh-huh.

8 MR. SHEEHAN: Okay. We're going to skip  
9 it, try to get Pete out of here early.

10 MS. CHAITMAN: We're skipping 9-30-86? Is  
11 that what you're doing?

12 MR. SHEEHAN: Yeah.

13 MS. CHAITMAN: Okay.

14 MR. SHEEHAN: All right. We don't need --

15 MS. CHAITMAN: There was a reference on  
16 the record that this was a two-page document, but  
17 it's much longer.

18 MR. SHEEHAN: Yeah, yeah. And I  
19 apologize.

20 MS. CHAITMAN: No. Okay. I just wanted  
21 to --

22 MR. SHEEHAN: It is indeed five pages.

23 MS. CHAITMAN: Okay.

24 MR. SHEEHAN: Okay. Sorry about that.

25 (Trustee Exhibit Number 2 was marked for

1 identification.)

2 MR. SHEEHAN: Put on the record what we're  
3 doing; okay?

4 MS. FEIN: I'm marking as Exhibit 2 a  
5 couple of consecutive customer statements, six  
6 pages, the first page MF 00367785.

7 Q. (By Mr. Sheehan) I'll let you know for the  
8 record that this is actually a six-page document.

9 A. Uh-huh.

10 Q. And take your time looking. You can look  
11 at the first page, all the pages now, and just let  
12 me know when you're ready; okay?

13 A. Okay. All right.

14 Q. So directing your attention to -- or  
15 perhaps we should identify it first. This purports  
16 to be a June 30, 1983 customer statement of Leonard  
17 Alpern?

18 A. Uh-huh.

19 Q. And I'm directing your attention to the  
20 entry 6-7, 6-14, Bancorp Hawaii, Inc. Do you see  
21 that?

22 A. Yeah.

23 Q. What do you understand that entry to  
24 represent?

25 A. You're talking about the journal, where it

1 says journal?

2 Q. No. It's --

3 A. You're talking about above that, the 6-7?

4 Q. 6-7, 6-14.

5 A. Okay. It looks to me like the purchase of  
6 a convertible bond.

7 Q. Well, before that, though --

8 A. Oh.

9 Q. -- the 220, the short position?

10 A. Okay, yeah.

11 Q. What's that?

12 A. Looks like a sale of 220 shares of Bancorp  
13 common at 27.

14 Q. And then on that same day just below that,  
15 another short. What's that?

16 A. Same thing, stock at different price for a  
17 larger amount of stock, 4,331 shares at 27.

18 Q. And then on 6-8 --

19 A. Uh-huh.

20 Q. -- there's a purchase there --

21 A. Right.

22 Q. -- of a long position. What's that?

23 A. That's the purchase of the -- of the  
24 convertible.

25 Q. Is that consistent with the convertible

1 arbitrage strategy to sell the short before you buy  
2 the convertible security?

3 A. Yeah. As I said, it depends upon what  
4 direction you think the market is going to go.  
5 Sometimes we would sell the stock before we bought  
6 the bond, you know, and sometimes we'd buy the bond  
7 first. That's a common practice in convertible  
8 bonds, verbal trading.

9 Q. So when you buy and sell the short first,  
10 you're at risk; are you not?

11 A. Yes.

12 MR. SHEEHAN: Okay.

13 MS. CHAITMAN: Objection to form. I think  
14 you meant buy the -- didn't you mean --

15 MR. SHEEHAN: No. You sell the short.

16 MS. CHAITMAN: Oh, okay.

17 THE WITNESS: These are not ever  
18 considered riskless trades, by the way, these types  
19 of trading. The client is well aware of the fact,  
20 you know, how the strategy works. That's legging.  
21 That's the reason you can do these trades for the  
22 most part successfully.

23 It is not -- you know, it is -- it would  
24 be very, very difficult to have a simultaneous  
25 transaction in a convertible security and generate

1 the kind of returns that we're anticipating, that  
2 the strategy is designed for. So that's where the  
3 skill of trading comes in and everybody that -- that  
4 was sophisticated enough, theoretically every client  
5 should have been, you know, the strategy was aware  
6 of the fact. That's why the strategy made sense.

7 Q. (By Mr. Sheehan) Isn't the -- I'll put  
8 this the correct way. If you sell -- buy the  
9 convertible security and it's at discount and you  
10 sell the stock short the same day, all right?

11 A. Right.

12 Q. Isn't that a risk-free transaction?

13 A. No, because depends upon what time, if you  
14 may have bought the bond at 10:00 o'clock in the  
15 morning and sold the stock at 2:30 in the afternoon.

16 Q. What if you did it simultaneously?

17 A. If you did it simultaneously --

18 Q. Yes.

19 A. -- it wouldn't be a risk providing you  
20 bought it at a discount.

21 Q. Right, okay. Why wouldn't you always do  
22 that then?

23 A. Because it might have -- the market  
24 wouldn't allow you to do that. It wasn't available.

25 Q. All right. One thing I noticed is that

1 going back again to the sales of the shorts, do you  
2 see the two entries?

3 A. Uh-huh.

4 Q. There are two different prices. Do you see  
5 that?

6 A. Yeah.

7 Q. Why didn't you average them?

8 A. Because this -- this transaction, you know,  
9 again, depending upon whether this order was part of  
10 a larger -- of a larger order or not. I can't tell,  
11 in other words. This might have been a stand-alone  
12 order. In other words, there may have not been  
13 other customers involved in this transaction or we  
14 may have been -- you know, may have been able to buy  
15 it all at the same price.

16 Q. As I understand, your criticism of Mr.  
17 Dubinsky is that he didn't understand you were  
18 average pricing; is that correct?

19 A. It depends upon whether you're talking  
20 about the split strike or whether you're talking  
21 about the convertibles and it depends upon when you  
22 were doing and what individual order.

23 Q. Let's take that piece at a time. Why would  
24 it be different between split strike and convertible  
25 arbitrage?

1           A. Because of the size of the -- the size of  
2 the orders, the size of the order that we were  
3 executing, the number of clients involved in the  
4 transaction.

5           Q. So the larger the order, what would happen?

6           A. The more you would spread it out over a  
7 period of days and buy it -- or even if you did it  
8 in the same day, you're buying it, you know, from  
9 different brokers at different prices. You go into  
10 the market to buy a thousand shares. You may be  
11 able to go -- to buy all at the same price or you  
12 may have to buy it at different prices from the same  
13 broker or from different brokers.

14          Q. All right. And if you were doing the  
15 convertible arbitrage strategy?

16          A. Do the same thing.

17          Q. Same thing. Okay. Since we're going to  
18 end up going through all these, I'm just going to  
19 direct your attention to the bottom of the page  
20 again.

21          A. Uh-huh.

22          Q. And it shows the end positions. Do you see  
23 that?

24          A. Right.

25          Q. Could you tell me what the two end

1 positions are?

2 A. It looks like you're long -- you're talking  
3 about the Hawaii?

4 Q. Right.

5 A. You're long the Hawaii convertible  
6 preferred and you're still showing an open short  
7 position of Hawaii common stock.

8 Q. And look at the price there at the end of  
9 the positions.

10 A. Uh-huh.

11 Q. Is it your testimony that's mark to market  
12 there?

13 A. I would assume it's mark to market.

14 Q. Okay. Now, what -- and you can look at all  
15 these, so and I'm just representing for the record I  
16 always say the documents speak for themselves, that  
17 if we were to go through each of these, as I  
18 understand it what we would see is that the -- well,  
19 maybe I shouldn't try to do that, try to speed  
20 things up and I shouldn't. Let's go to the next  
21 page if I could. All right? And this is a  
22 statement from 7-29-83. Do you see that?

23 A. Yes.

24 Q. And again, the end positions are what?

25 A. Hawaii. You're short Hawaii common stock



1 and you're long convertible bonds, uh-huh.

2 Q. Okay. So that means that you're still  
3 holding them since the 6-30, the 6-7 and 6-8  
4 transactions?

5 A. Correct.

6 Q. Okay. And again, the price there under the  
7 close-out is a mark to market price?

8 A. I'm assuming that they're mark to market  
9 prices. You know, I'm not sure going back into '83  
10 how they handled the -- whether they actually mark  
11 to market at that stage or they just carried it  
12 forward at the same price that it was bought at. I  
13 don't know.

14 Q. Aren't you supposed to tell the customer  
15 what their market value is?

16 A. No.

17 Q. And their positions?

18 A. No. You're not -- you're not obligated to  
19 tell them. You're obligated to tell them -- you  
20 know, obviously, what you wouldn't be able to do was  
21 put a price on it that was totally unrelated to the  
22 market, that would be unrealistic to the market  
23 price; but typically our systems, you know, I'm  
24 assuming that they were the same in '83 or, you  
25 know, as they were, you know, at a later date. They

1 get mark to market by the system.

2 Q. Okay.

3 A. So that's why, you know, typically I've had  
4 no reason to believe that it wasn't handled that way  
5 in '83, but I can't tell you for sure.

6 Q. Again, would that be Annette or one of her  
7 people doing this operational work?

8 A. It would be the -- it depends upon whether  
9 the system did this or they did it manually.

10 Q. Okay. But would Annette Bongiorno be  
11 responsible for the operational --

12 A. Someone in the -- well, someone in that  
13 department. Back in '83, you know, there were  
14 different people. It could have been Dan Bonventry,  
15 you know. I don't know.

16 Q. Right. Let's go to the next statement.  
17 This is August 31, '83 and there are three entries  
18 there on August 8th. Do you see them?

19 A. And by the way, let me just correct  
20 something so you know. Annette Bongiorno is  
21 basically a bookkeeper. She's not really what we  
22 would deem to be a senior operations person,  
23 particularly in 1983. She's more of a bookkeeper  
24 clerk. She's not a systems person or she's not a  
25 cashier, an operations person.

1 Q. Let me clarify that then because when I  
2 asked you earlier who would be responsible, you told  
3 me Annette. Is there someone else who would have  
4 been responsible?

5 A. She's responsible for the client. She  
6 handles the client business. She doesn't -- like  
7 she's not in the back office type of an operations  
8 that receive or deliver or even the mark to the  
9 market. That's not something that she would handle.

10 Q. In this '83/'84 time frame --

11 A. At any time.

12 Q. I understand that, but my question was  
13 going to be in that time frame who would have been  
14 that back office person?

15 A. I don't remember. It could have been Dan  
16 Bonventry. It could have been, you know, Irwin  
17 Lipkin. It could have been, you know, Sylvia  
18 Hendel.

19 Q. All right. Let's turn as I was just going  
20 to to August 31, 1983. Again, this purports to be a  
21 statement for Leonard Alpern of that date. If you  
22 would look at the entries for August 8th and tell me  
23 what they represent to you?

24 A. August 8th?

25 Q. Yep.

1           A. Oh, it looks like the -- a purchase --  
2 well, these are receiving -- this is a transaction  
3 of warrants, forum group warrants. And these are  
4 just receive and deliver of positions of forum  
5 warrants.

6           Q. Yeah. Do you see what the entry there is  
7 on 8-8 with regard to the preferred security?

8           A. On 8-8?

9           Q. 8-8.

10          A. Yes.

11          Q. There's an entry where it is you're  
12 selling. Do you see that?

13          A. Monsanto?

14          Q. No. The Bancorp Hawaii preferred?

15          A. This looks like a receive and deliver.

16          Q. Right.

17          A. Uh-huh. That's not a buying or a sell.  
18 That's a receiving.

19          Q. So you delivered in the convertible  
20 securities?

21          A. That's the accountant was -- right.

22          Q. Does that mean you converted it?

23          A. It could have been converted, it could have  
24 been swapped.

25          Q. What's a swap?

1           A. A swap is when you go in and you exchange  
2 the position with -- for the customer with another  
3 -- with another client or another -- a bank or  
4 another dealer.

5           In other words, you had someone on the  
6 other side of the transaction that -- if I have --  
7 if a client is long on bond and short common stock  
8 and you -- the trader is -- I determine that I want  
9 to close out that transaction and rather than go out  
10 and physically convert it into the other, I just  
11 want to go ahead and go into the marketplace or go  
12 into another dealer and say look, I'm willing to  
13 convert -- I'm willing to exchange my bonds for  
14 stock and so on and so forth. You wouldn't want it  
15 that way.

16          Q. Okay. Let's go back to the 6-30-83  
17 statement here of Mr. Alpern. So it's two back, I  
18 think. June 30. And there's an entry there on  
19 June 8th that's showing fractional shares being  
20 credited to the account. Do you see that?

21          A. 6-30? Oh, the statement. Okay. Yeah,  
22 right, uh-huh.

23          Q. The statement is 6-30, but the entry is  
24 6-8?

25          A. Right, yeah.

1 MR. SHEEHAN: I'm sorry.

2 MS. CHAITMAN: Which line are you looking  
3 at?

4 MR. SHEEHAN: I apologize. It's 6-15.

5 THE WITNESS: Okay.

6 MR. SHEEHAN: I'm looking at the wrong  
7 line. I apologize.

8 MS. CHAITMAN: Okay. 6-15, okay.

9 Q. (By Mr. Sheehan) Yeah. 6-15, do you see  
10 fractional shares?

11 A. Uh-huh.

12 Q. See that? Would that indicate to you that  
13 it had been converted?

14 A. I'm responding the same way I said before.  
15 I don't know whether it was converted or whether --  
16 I don't know how they handled the fractional shares.

17 Q. And do you have an explanation of why you  
18 would have fractional shares showing on 6-15 when,  
19 in fact, the preferred wasn't delivered until 8-8?

20 A. I can't respond to that. I don't know how  
21 they handled that. I'm not an operations person.

22 MR. SHEEHAN: Okay. All right.

23 (Discussion off the record.)

24 MR. GOLDMAN: I can see.

25 Q. (By Mr. Sheehan) Yesterday Ms. Chaitman

1 asked you about a meeting with the attorney's office  
2 shortly after your arrest. Do you remember that?

3 A. Yes, yeah. Oh, yeah. Okay.

4 Q. Okay. Well, let me put it in context. I'm  
5 going to represent to you that that meeting took  
6 place on December 16th, 2008.

7 A. You're talking about down here?

8 Q. No, no. I'm talking about --

9 A. Oh.

10 Q. -- 2008, December 16th, days after your  
11 turning yourself in as --

12 A. Right.

13 Q. Did you meet with -- do you recall meeting  
14 with the U.S. Attorney and other representatives of  
15 the SEC, et cetera?

16 A. Up in my house, in my apartment?

17 Q. No. I'm not sure the location. I wasn't  
18 there.

19 A. Yes. It was in my apartment.

20 MR. SHEEHAN: Okay.

21 MR. GOLDMAN: Wait. Don't -- I don't  
22 know, but are you confusing the FBI with the U.S.  
23 Attorney's office?

24 THE WITNESS: No. There was a meeting  
25 that was held that had a lot of people. They had

1 the FBI was up there. Marc Litt was on a conference  
2 call, who was the prosecutor. There was a whole  
3 bunch of people. There must have been 20 people up  
4 in my apartment.

5 Q. (By Mr. Sheehan) That's the meeting I'm  
6 referring to. I didn't know it was in your  
7 apartment. I forgot you weren't incarcerated. You  
8 were --

9 A. The only Trustee I remember being there was  
10 the Trustee, I think, from London or from -- I don't  
11 know if it was -- it wasn't Picard.

12 Q. No. He was not there.

13 A. No.

14 Q. Do you mean Mr. Akers?

15 A. I don't remember his name, but I remember  
16 he was the Trustee from Price Waterhouse, I think.

17 Q. Okay. All right. And what was the purpose  
18 of that meeting?

19 A. I don't really -- I don't know.

20 Q. Do you recall before the meeting signing  
21 what's called a proffer statement?

22 A. Yes. That was at the -- that wasn't -- the  
23 proffer meeting was, you know, before that.

24 Q. Right. What did you understand the proffer  
25 statement to be?



1           A. That basically to just, you know, explain  
2 to them what happened, how the fraud began and  
3 started and so on. It was --

4           Q. Right. And were you aware that someone --  
5 that the FBI was taking notes of that meeting?

6           A. I was aware that they were there. I don't  
7 remember whether they were taking notes or not.

8           Q. Are you aware of the fact that they reduced  
9 those notes to what they call a 302 statement?

10          A. No.

11          Q. Okay.

12          A. I don't know what that is.

13          Q. All right.

14          A. I think the FBI was standing at my piano.  
15 They didn't seem to be taking notes because I  
16 remember they were looking through the pictures of  
17 my family at the piano. They didn't seem to have  
18 much of an interest in what was going on. I don't  
19 know why they were even there, quite frankly.

20          Q. Okay. And I think Ms. Chaitman already  
21 asked you this, but when you spoke to that group  
22 that day did you tell them the truth?

23          A. Uh-huh, yes.

24          Q. Okay. Let's -- I want to go back to  
25 operations. We'll go back to 302 later, but the

1 operations of the business. And just to get some  
2 clarity on that, and I want to start with house  
3 five. All right. We call it house five. Did you  
4 call it house five?

5 A. It sounds familiar, but yeah. That's not  
6 my area.

7 Q. Okay. We understood that you called the  
8 market making and proprietary operation house five.

9 A. That's what the operations department  
10 called it, I guess.

11 Q. Okay, fine. It's not a term that's  
12 unfamiliar to you; is it?

13 A. Slightly. I'm not sure.

14 Q. Okay. Well, then let's just call it market  
15 making.

16 A. Uh-huh.

17 Q. When I say that, I mean both market making  
18 and proprietary unless you tell me I'm wrong.

19 A. No. It sounds about right.

20 Q. Okay. And what I need to know is I'm going  
21 to ask you some names and if you could just tell me  
22 as you understood it, and I'm focusing on the '80s  
23 now because we already talked about post-'92,  
24 focusing on the '80s, what the work assigned to them  
25 was, what they were required to do, et cetera, what

1 their jobs were. All right? And the first one is  
2 Marty Joel.

3 A. He was a trader.

4 Q. Okay. In the market making?

5 A. Correct.

6 Q. Okay. David Kugel, I think we've heard  
7 about him?

8 A. Same.

9 Q. Okay. Did he ever provide any assistance  
10 in the investment advisory side?

11 A. Other than -- other than giving Annette's  
12 department the correct formula to use when you were  
13 handling a trade for a client.

14 Q. Okay. Andrew Madoff?

15 A. I think he started after '87; didn't he?

16 Q. Yeah. He was later.

17 A. He would have been proprietary trading and  
18 market making at that time.

19 Q. What about Mark?

20 A. The same.

21 Q. What about Peter?

22 A. Peter was at one point a market maker,  
23 involved in market making. I'm not sure of the --  
24 I'm not sure of the dates. And then he also was a  
25 compliance, handled the compliance for the firm and

1 systems. He did a lot of things, my brother.

2 Q. Okay. Now, how were the market make -- the  
3 traders in market making, how were they compensated?

4 A. They get -- typically got a percentage,  
5 25 percent of their net trading profit.

6 Q. And how was that calculated?

7 A. By whatever, you know, the back office  
8 would come up with a figure of what the net profit  
9 was based upon after deducting trading expenses.

10 Q. Okay. So let's say I did -- I'm going to  
11 give you a hypothetical. You can correct it if I  
12 say something wrong, but the trader does a trade for  
13 50,000 shares of General Electric and he generates a  
14 profit of \$25,000. All right?

15 A. Uh-huh.

16 Q. And then you take that 50,000 shares and  
17 you move it over to the IA business as taking  
18 inventory from market making; right?

19 A. Uh-huh.

20 Q. You said that's what you would do. How  
21 does he get compensated at that point?

22 A. He doesn't -- the market making doesn't --  
23 isn't compensated for anything dealing with a  
24 client. The market makers get compensated on  
25 basically what their profit was when they bought and

1 sold the stock, you know, from other dealers. The  
2 market makers did not handle the customer  
3 transaction. They weren't selling it. So the  
4 market makers typically only dealt with other  
5 broker-dealers.

6 Q. Okay. Did the traders have limits on the  
7 amount of capital they could invest?

8 A. Yes, uh-huh.

9 Q. Would they be different for each trader?

10 A. Yes.

11 Q. Do you remember what David Kugel's was?

12 A. You know, I don't remember. Depends upon  
13 the time frame, you know, we've been talking about.  
14 They vary.

15 Q. I want to go back to Marty Joel for one  
16 question.

17 A. Uh-huh.

18 Q. Did he do convertible arbitrage?

19 A. Yes.

20 Q. He did. Let's go to house 17, right, which  
21 is the investment advisories?

22 A. Right.

23 Q. Okay. And if you can give me sort of the  
24 employment history background of the following  
25 people, what their jobs were, et cetera, which may

1 have changed over time.

2 A. Right.

3 Q. And if you could tell me that, that would  
4 be good, too.

5 A. Uh-huh.

6 Q. Frank DiPascali?

7 A. What time frame are you talking?

8 Q. Let me start with when Frank started and  
9 how his roles changed over time.

10 A. He started basically as a clerk.

11 Q. When was that?

12 A. I don't remember when he started, quite  
13 frankly.

14 Q. Approximately. In the '70s, '80s?

15 A. Probably, I guess, in the '80s.

16 Q. Okay, fine.

17 A. I don't know.

18 Q. Okay. So he started as a clerk and then  
19 what?

20 A. He started as a -- well, he started as an  
21 assistant trader or clerk. He was, quite frankly,  
22 never particularly -- he wasn't particularly  
23 talented as a trader. He also had a problem with  
24 attendance. He -- for some reason Frank had a  
25 difficult time making the opening.

1 Q. Right.

2 A. So he -- he worked as a desk assistant,  
3 which is basically a clerk for one of the other  
4 market makers. That's how they get experience and  
5 they learn. And depending upon what -- what the  
6 trader that they're assisting thinks of his ability,  
7 they then move up to being -- get a list of stocks,  
8 you know, on their own as a market maker.

9 He never really had that. He was never --  
10 he was never -- we never felt he was capable of  
11 being a risk, what we call a risk trader, market  
12 maker.

13 Q. So did he ever become a trader in your  
14 market making operation?

15 A. No.

16 Q. So what he did do was -- I don't want to  
17 put words in your mouth. He assisted? Would it be  
18 fair to say he assisted the traders?

19 A. Yeah, yeah. He did. He assisted any  
20 number of different traders, which was common. We  
21 would move him around from different traders to  
22 learn different aspects of the market making  
23 business.

24 Q. Did there come a time where he did more  
25 than being an assistant to a trader?

1 A. On the trading desk?

2 Q. No, outside. Did he move on?

3 A. He did move on. He moved on to handling  
4 the clients, handling the actual, you know, breaking  
5 up the strategies for the clients.

6 Q. Okay. Would he work on the convertible  
7 arbitrage strategy?

8 A. Yes. At times, yep.

9 Q. Okay. And then did he work on the split  
10 strike conversion strategy?

11 A. Yes.

12 Q. When did he -- as best you can recall, when  
13 did he make that move to the customer side?

14 A. He was doing it in probably the maybe late  
15 '80s to early '90s.

16 Q. Okay. What role did -- if any, did Frank  
17 DiPascali play in turning to a split strike  
18 conversion strategy?

19 A. He would have played a major role at that  
20 stage, you know.

21 Q. What did he do?

22 A. He supervised all the other people. He  
23 took instructions from me as to when we were going  
24 to go into the market. And he was -- he was very  
25 talented when it came to helping to build the system



1 that tracked the various baskets of securities and  
2 so on. He did pretty much everything.

3 Q. Okay. So let's turn to Annette Bongiorno,  
4 sort of the same thing. When did she start and what  
5 was her employment history?

6 A. She started basically almost as a  
7 receptionist when the firm had very few employees.  
8 She was a bookkeeper, receptionist. People did  
9 multiple jobs, you know.

10 Q. And did there come a time when she passed  
11 beyond being just a receptionist and did other  
12 things?

13 A. Yeah. I mean, you know, she learned --  
14 because she came to work for us, you know, right out  
15 of school. So she didn't know anything about  
16 bookkeeping really or, you know, the stock market  
17 and so on. So it was just a gradual process.

18 Q. Did she work on the market making side?

19 A. No.

20 Q. Did she always work on the customer side?

21 A. Yes.

22 Q. What -- when she went past being the  
23 receptionist, what have you, what was her next role?

24 A. She -- I would say she moved from starting  
25 to being sort of a combination secretary,

1 bookkeeper, you know. She did a lot of -- you know,  
2 we didn't have a lot of people working for us. And  
3 then she -- you know, she handled the customers.  
4 She spoke to them on the telephone. They got  
5 instructions. She answered questions about their  
6 accounts and so on and so forth.

7 Q. Did Annette Bonjourno work on the split  
8 strike conversion strategy?

9 A. For the most part she didn't have a major  
10 role in that, no.

11 Q. What were the customers she was talking to  
12 and working with?

13 A. She handled the big four clients was her  
14 particular role. And also she ran a whole  
15 department of other bookkeepers, you know, that  
16 handled -- that were involved in doing the  
17 processing of the split strike trades.

18 Q. Okay. Just a couple more. Jodi Crupi?

19 A. Jodi Crupi worked as an assistant to Frank  
20 DiPascali and basically in the split strike, in the  
21 convertibles. Primarily it was on the -- she was on  
22 the 17th floor and she handled the checkbook, checks  
23 in, checks out for clients and so on.

24 Q. Okay. And then, lastly, Joanne Sala?

25 A. Joanne Sala was in Annette's department,

1 basically was a bookkeeper.

2 Q. Okay. She reported to Annette?

3 A. Yes.

4 Q. Okay. Who -- I think you've already  
5 answered this, but I want to just be sure. The  
6 financial reporting --

7 A. Uh-huh.

8 Q. -- that was required of you as you ran it  
9 individually or later as an LLC, who was responsible  
10 for that financial reporting?

11 A. Financial reporting where? You're talking  
12 about the focus reports?

13 Q. Like focus reports or any other SEC  
14 inquiries or things like that.

15 A. Basically, that would have been -- well,  
16 certainly me always from day one --

17 Q. Right.

18 A. -- you know, was the one that signed the  
19 focus reports and reviewed the focus reports. It  
20 would have been Irwin Lipkin, who was the --  
21 considered to be the cashier originally. Then there  
22 was a girl named Sylvia Hendel, who happened to have  
23 been killed by a bus leaving the office one day.  
24 That was in the '90s. She was the -- she had the  
25 job that Enriquita Pitz took over.

1 Q. Okay.

2 A. So she compiled the focus reports at one  
3 point. She worked with Irwin Lipkin.

4 MR. SHEEHAN: Okay. Let's take a break  
5 right here; okay?

6 MS. CHAITMAN: Sure.

7 THE VIDEOGRAPHER: Going off the record.  
8 The time is 10:11 a.m.

9 (A recess was taken and Trustee's Exhibit  
10 Number 3 was marked for identification.)

11 THE VIDEOGRAPHER: Back on the record.  
12 The time is 10:25 a.m.

13 Q. (By Mr. Sheehan) Mr. Madoff, you're about  
14 to be handed Exhibit Number -- the Trustee's Exhibit  
15 Number 3.

16 A. Uh-huh.

17 Q. And for the record, I will identify this as  
18 a document that is copies of a Rolodex set of cards.  
19 And the reason you have all, but we're not going to  
20 ask you about all these pages here, we're going to  
21 ask you about the first couple, but is that this is  
22 a complete set of what was in that Rolodex. All  
23 right. So we wanted to give you that.

24 A. Uh-huh.

25 MS. CHAITMAN: Whose Rolodex was it?

1 MR. SHEEHAN: It's Mr. Kugel's.

2 MS. CHAITMAN: David Kugel's. All right.

3 Q. (By Mr. Sheehan) So turning to the second  
4 page, and these are double-sided so it's on the  
5 left-hand side.

6 A. Uh-huh.

7 Q. Take a -- I'm going to actually only ask  
8 you about the left and the right-hand side, those  
9 two cards at this point. And take your time. Take  
10 a look at it first. So my first question --

11 A. Uh-huh.

12 Q. -- is do you recognize the handwriting?

13 A. It's certainly not David Kugel's.

14 Q. Okay.

15 A. No.

16 Q. Do you know who it is?

17 A. No.

18 Q. Is any of this handwriting yours?

19 A. No.

20 Q. Okay. So it says on this, it starts -- and  
21 I'm just going to read it. Obviously, the card  
22 speaks for itself, but it says prices and then one  
23 that's circled. It says look on calendar for work  
24 to be done Tuesday through Monday. Do you see that?

25 A. Uh-huh.

1 Q. And then it says two, go back two Fridays.

2 A. Uh-huh.

3 Q. And three, that will give you your date to  
4 start to present for instances 6-5 through 6-11?

5 A. Uh-huh.

6 Q. Start at 5-25-84 --

7 A. Uh-huh.

8 Q. -- through present?

9 A. Uh-huh.

10 Q. Now, what, if anything, does that mean to  
11 you?

12 A. I'm assuming that they're giving whoever is  
13 setting up the transaction instructions as to when  
14 to look through the trading ledgers to see when we  
15 -- what stock we bought or bonds we bought.

16 MS. CHAITMAN: David, if I can just  
17 interrupt, whose handwriting is this? Do you know?

18 MR. SHEEHAN: Not -- I don't know.

19 MS. CHAITMAN: But you said it was David  
20 Kugel's --

21 MR. SHEEHAN: It's his Rolodexes. He's  
22 identified them in the past. I don't know whose  
23 handwriting.

24 THE WITNESS: He would not have this.  
25 This is not -- this would have nothing to do with

1 David Kugel. This is something that is -- would be  
2 in Annette's department because David Kugel doesn't  
3 even have a Rolodex. This would not be up in his --  
4 you know, on his desk.

5 These were instructions to whoever is  
6 actually going to put the trades through and it's  
7 telling them to search through the firm's trading  
8 ledgers and investment ledgers. It's looking  
9 through the inventory to pick out, you know, what  
10 prices or what stocks to use.

11 Q. (By Mr. Sheehan) Mr. Kugel has testified  
12 that he would go back two weeks to find trades that  
13 gave a predicted outcome?

14 A. Yeah. He could be looking at, you know, at  
15 his market making trades in which, you know, what  
16 bonds we bought, which then would go into the firm's  
17 trading ledger.

18 So if, in fact, Annette would call him or  
19 whoever called and say look, David, we have money in  
20 that we need a million dollars' worth of  
21 transactions for a convertible security, he would  
22 look into his -- you know, his market making, you  
23 know, trading which he had -- he had sheets as to  
24 what he bought and sold and look at what -- what  
25 stocks, what strategy was available, you know, for

1 that. So that's what they're asking him to do.  
2 They're asking him to pick out a convertible that --  
3 that he was able to set up, long the bonds and short  
4 the stock at a particular price. That was his --  
5 that was his job. That's where he made money.

6 Q. The testimony that he's given is that this  
7 was done to give a predetermined profit to somebody?

8 A. No. Look, I tried to explain that to you  
9 yesterday. That's not the way the trades are done.  
10 Let me explain it to you. The market maker is  
11 making -- that trades convertible bonds or whether  
12 he trades stock, it doesn't matter. He's trading  
13 convertible bonds.

14 The convertible bonds trader, whether it be  
15 Marty Joel, whether it be David Kugel, whether it be  
16 Mark Feldman or any other number of convertible  
17 traders, their job is making a market and trading in  
18 that convertible security, at which point they are  
19 -- they're quoting to the -- out to the immediate  
20 world what they want to buy bonds and short stock.

21 And they may turn around and set up the  
22 trade. They'll buy bonds on Monday and sell stock  
23 Monday afternoon or maybe they'll sell it Tuesday or  
24 Wednesday and they have a -- they have a position, a  
25 market making position being long on bonds and short



1 of stock. And they may have a -- as I said, they  
2 may be planning to do this eventually to convert or  
3 they may want to turn around and just unwind the  
4 transaction, having nothing to do with the client.  
5 You know, everything that the market makers buy and  
6 sell doesn't typically go to a client.

7 It goes to the firm's account, and he  
8 doesn't care whether we sell it to a client or not.  
9 His profit and loss is based upon what he's able to  
10 buy that stock. Then, you know, then that stock  
11 goes into the firm's trading inventory. All right.  
12 And at that stage of the game it's the firm's  
13 inventory.

14 If, in fact, we have a customer that we  
15 wanted to set up a trade for, what typically we do  
16 is Annette or whoever would contact David and say  
17 listen, we have money that we want to set up for a  
18 client in a convertible bond. Did you have any  
19 trades that you -- that looked like that would be a  
20 good trade for a customer, you know?

21 He would -- you know, he would say yes.  
22 Okay. I did trades in Bancorp or whatever it is and  
23 he'd say just, you know, if you're going to set up a  
24 trade in Bancorp, you have to buy the bonds, you  
25 know, X number of bonds, short X number of stock.

1 They then would go and turn around, the next step  
2 would be the person let's say on the 17th floor or  
3 wherever they were located would then search through  
4 the firm's ledgers and inventory or blotters, you  
5 know, discount, and pick out those securities. And  
6 then we're doing that.

7 All right. Now, that's -- then it becomes  
8 a client trade. The market maker doesn't get  
9 involved in that unless we're taking it out of his  
10 inventory. And you then -- and the reason why the  
11 market maker doesn't get any compensation on that,  
12 because that's -- the firm is now charging the  
13 customer a mark-up, which is a little -- can be  
14 considered a commission equivalent.

15 And that's what the investment advisory  
16 side is making their profit. The market maker  
17 doesn't participate in that.

18 Q. Wasn't a mark-up just four cents a share?

19 A. It varied. It depends upon -- the  
20 convertible bond market was different than the split  
21 strike was -- used to be three cents, four cents,  
22 three cents, then it went down to two cents; but the  
23 convertible bond market could be a maximum of five  
24 percent, which was what the NASD was. This was  
25 years ago, but then we typically would be less than

1 it would typically be, a couple of percent.

2 Q. So when the traders trade with -- you know,  
3 looking back to find a trade that's going to give a  
4 profit to your customer --

5 A. Uh-huh.

6 Q. -- and you move that out of inventory, the  
7 trader loses his income off of that?

8 A. No. He doesn't lose his income. He loses  
9 that position.

10 Q. And does he get paid for the profit that  
11 he's generated?

12 A. Yeah. Of course, he gets trade for the --

13 Q. I thought you said a moment ago he didn't?

14 A. He gets trade for his profit, what he's  
15 buying and selling, you know. Once -- if the --  
16 depends upon whether it remains in the trader's  
17 inventory or whether it's moved out of the trader's  
18 inventory.

19 Q. That's my point. If it goes into the  
20 customer account --

21 A. Right.

22 Q. -- you give the profit to the customer;  
23 right?

24 A. We give the profit of the trade to the  
25 customer, yeah.

1 Q. Right. So how do you compensate the  
2 trader?

3 A. He doesn't get compensated. His  
4 compensation comes from his trading with our  
5 customers. Most of his market maker's trades, you  
6 know, have nothing to do with clients. It goes in  
7 and out, you know, bought and sold and never even  
8 appears in the customer transaction.

9 Q. But if you're using your inventory, if the  
10 customer inventory is, in fact, market making  
11 positions --

12 A. Right.

13 Q. -- are you paying twice on the profit?

14 A. No. He's -- once it's in his -- if it's in  
15 the inventory and is not in a customer -- it's not  
16 been used for a customer, then if the trader gets  
17 mark to market, you know, and that profit or loss is  
18 the trader's. Once it goes out of, once it's taken  
19 out of our inventory --

20 Q. Right.

21 A. -- or out of the trader's inventory, he's  
22 finished with it. That's it.

23 Q. Does the customer then get the same profit?

24 A. The customer gets the profit based upon  
25 whether the -- you know, what happened with the

1 transaction, whether it was unwound, whether it was  
2 converted and so on. They're two separate trades.

3 Q. Well, you mean you can actually realize  
4 profit before the conversion or before the  
5 unwinding?

6 A. No, not until the customer's trade is  
7 closed out. Look, let me give you an example.  
8 Let's assume -- let's assume you're forgetting about  
9 a convertible trade or bond. Let's look at common  
10 stock. Bear Stearns or Merrill Lynch, you know, has  
11 a market making department. All right. The market  
12 makers are trading the stock for the firm's account  
13 and they're making profit or loss, you know, on  
14 their -- whatever they're trading. All right.

15 Q. Yeah.

16 A. They then -- they then, you know, take  
17 from -- the market makers shows the position of long  
18 a thousand shares of stock at ten. If that -- if  
19 that now goes -- you know, the salesman is looking  
20 to buy stock for one of his clients at ten.

21 Q. Right.

22 A. He goes in and he's going to buy it from  
23 the firm's inventory at ten and charge the customer  
24 a commission. Once the stock is taken out of the  
25 firm's inventory for the market maker, he's out of

1 the picture anymore depending -- you know, because  
2 the stock is now sold to a client. So the client's  
3 -- if the client bought the stock at ten, the market  
4 maker may have bought stock at ten and he -- you  
5 know, and then turned around, stock went up to  
6 eleven.

7 And, you know, that's his profit, from ten  
8 to eleven. Now the customer comes into the  
9 transaction to buy the stock at eleven, you know,  
10 and the stock may go up to twelve. That's the  
11 customer's, you know, profit or the commission  
12 involved, has nothing to do with the trader.

13 Q. I understand that, but what I was saying,  
14 when you're dealing with a convertible arbitrage  
15 strategy doesn't a profit always occur when you  
16 either unwind it or you convert it?

17 A. Yes, yeah.

18 Q. And doesn't that always happen in the  
19 customer account if you take it out of inventory and  
20 put it in the customer's account to give them that  
21 profit?

22 A. That's right.

23 Q. Okay. So then whatever profit was there is  
24 lost to the trader because now you've taken it out  
25 and given it to the customer?

1           A. Yeah, but he -- it's -- I'm not sure I  
2 understand what you're trying to get at.

3           Q. Well, he can't make a profit in the market  
4 making operation until he either unwinds it or he  
5 converts it; right?

6           A. If --

7           Q. You're saying that you look back and you  
8 see that sitting there and you realize I'm going to  
9 take that out of there and give it to a customer and  
10 give them that profit.

11          A. Uh-huh.

12          Q. And you do; right? That's your market  
13 making or your convertible arbitrage strategy?

14          A. For the customer, right.

15          Q. Right. But if you take it out of the  
16 inventory of the market maker, he can't get any  
17 profit because --

18          A. No. He doesn't. His profit was made on  
19 transactions that had nothing to do with the  
20 customer, just buying and selling the stock, you  
21 know.

22          Q. All right. I think we've gone over it  
23 enough. Let me ask you this. When you were doing  
24 the split strike conversion strategy, you know, in  
25 the '90s and not buying stock --

1 A. Uh-huh.

2 Q. -- how would you arrive at the prices that  
3 you would put into the basket?

4 A. Based upon, you know, what the stock was  
5 selling at at that price.

6 Q. Would you not look back and figure out what  
7 the stock was so you would always sell -- sell high  
8 and buy low?

9 A. No. In other words, the -- that was all  
10 done by a system that we had dynamic systems. We  
11 had ticker feeds that came into the firm. And the  
12 split strike, there was a program built that would  
13 monitor the stocks that were in the basket, you  
14 know. So that was all done automatically. It  
15 wasn't that we went back and, you know --

16 Q. You didn't do it with hindsight?

17 A. No.

18 Q. You didn't use yesterday's newspapers?

19 A. No.

20 Q. All right. If I told you that VWAP for you  
21 is at 80 percent, you know, profit --

22 A. Uh-huh.

23 Q. -- what would your comment be on that?

24 MS. CHAITMAN: Objection to form.

25 THE WITNESS: I'm not sure I understand



1 what you're asking me.

2 Q. Okay. In other words --

3 A. VWAP is --

4 Q. -- if you're doing VWAP, what's good VWAP,  
5 a good percentage?

6 A. VWAP refers to what was bought and sold.  
7 It has nothing to do with what a profit is. VWAP is  
8 measured based upon what -- what actually took place  
9 on the floor of an exchange if, in fact, you were  
10 executing the order. It's not -- it would have  
11 nothing to do with split strike.

12 Q. Doesn't it have to do with best price?

13 A. It has to do with what you would have been  
14 -- what you would have been able to execute an order  
15 at --

16 Q. Right.

17 A. -- on the floor. In other words, what  
18 actually took place on the floor.

19 Q. And price is part of that analysis?

20 A. Yeah, of course.

21 Q. Right. And when you were selling in the  
22 split strike, you said you never did a VWAP  
23 analysis?

24 A. No.

25 Q. All right. If you did one, would you be

1 surprised to know that you always sold -- 80 percent  
2 of the time you sold high?

3 MS. CHAITMAN: You sold what?

4 MR. SHEEHAN: High.

5 THE WITNESS: First of all, let me explain  
6 something to you.

7 MS. CHAITMAN: Objection to form.

8 THE WITNESS: The VWAP, the VWAP is trades  
9 that took place on the floor of the exchange, has  
10 nothing to do with what took place over the counter.

11 MR. SHEEHAN: Right.

12 THE WITNESS: So it wouldn't equate to us  
13 because VWAP, a VWAP is measured on floor  
14 executions. Our executions were -- our executions  
15 if we were executing would have been over the  
16 counter. It wouldn't matter.

17 Q. (By Mr. Sheehan) You mean all the stocks  
18 that you had in your split strike baskets were  
19 over-the-counter trades?

20 A. Yes.

21 Q. The stocks themselves?

22 A. Yeah.

23 Q. Not the calls and puts?

24 A. No. The stocks themselves. We were the  
25 largest third market maker in the country.

1 Q. So --

2 A. Madoff was known as the largest third  
3 market dealer in the country. You know, all of our  
4 transactions that we did with hundreds of our  
5 brokerage firms --

6 Q. Yeah, but --

7 A. -- and listed securities was done over the  
8 counter. They weren't stock exchange. They weren't  
9 even reported to the stock exchange.

10 Q. You never put any of your split strike  
11 trades to your market making?

12 A. No. We didn't do the trades. The clients  
13 thought we were doing the trades over the counter.  
14 They never assumed that we were doing them on the  
15 floor of an exchange because our business was  
16 over-the-counter dealing.

17 Q. So when you traded 200 million shares of  
18 Microsoft, you did that OTC?

19 A. Yes. Well, first of all, Microsoft isn't  
20 listed on the exchange anyway. Let's say -- let's  
21 say IBM --

22 Q. Right.

23 A. -- which is a listed security. We were not  
24 -- our trades weren't done on the floor of the  
25 exchange. With Merrill Lynch when Merrill Lynch

1 bought stock from us, they were buying that -- that  
2 was an over-the-counter transaction even though it  
3 was a listed security.

4 Q. When you say listed, you're limiting  
5 activity to --

6 A. Listed on the --

7 Q. New York Stock Exchange.

8 A. It's eligible to list on the -- it's a  
9 stock that is listed over -- look, today, for  
10 example, 70 percent of the New York Stock Exchange's  
11 listed securities are transacted over the counter.  
12 They're not -- they're transacted through the black  
13 -- the dark pools. They're transferred -- they're  
14 executed through dealers like Madoff.

15 Only 30 percent of them actually take place  
16 on the floor. So when you look at a VWAP order,  
17 that's a VWAP is reflecting to trades that took  
18 place on the floor of the exchange. They're not  
19 taking -- they have nothing to do with an  
20 over-the-counter transaction even though it's a  
21 listed security.

22 Q. Okay. All right.

23 A. You know, I want to interject something.

24 Q. You go right ahead. I love when witnesses  
25 volunteer.

1           A. You asked me about David Kugel and how  
2 could he have said certain things.

3           Q. Right.

4           A. I'm not sure -- if you were asking these  
5 questions of David Kugel right now, he would  
6 probably be as confused as let's say he would be  
7 going through exactly what you're doing by saying,  
8 well, did you -- how did you set this transaction  
9 up?

10                   And David Kugel would say to you, well, I  
11 go back and I look at my transactions of what I did,  
12 you know, in this particular security, you know,  
13 four or five days ago because I know that that  
14 security is in the inventory. All right. So that  
15 was -- there were bonds bought and stocks bought  
16 because he bought and sold them. So now -- and he  
17 may have bought them for his market making account.

18                   He may have bought it for the firm's  
19 investment account. And he'd say yeah, that's a  
20 transaction you should do. All right. That -- he  
21 gives that information to now the operations  
22 department, let's say Annette's department. They  
23 then go and they look through. If you -- if for  
24 some reason you interpreted what David said is that  
25 he actually set up the transaction, that he went

1 back and looked at prices, it was not what you -- he  
2 wasn't selling, going to use the prices that I  
3 bought in stock for. He would be looking -- looking  
4 for the firm's -- now that's in the firm's  
5 inventory. It's different. There's a market making  
6 inventory and then there's the firm's inventory.

7 Q. I understand, but just to stick with that  
8 for a minute. All right?

9 A. Okay.

10 Q. So David executes a split -- not a split  
11 strike. A convertible arbitrage strategy?

12 A. Uh-huh.

13 Q. Let's say he even does it on the same day.  
14 All right. So he's got profit built in risk-free.  
15 It's two weeks later. That trade actually happened.

16 A. Right.

17 Q. Right. And when he puts into the -- you  
18 put into the customer statement is that exact trade,  
19 but there's no profit because there was no trade?

20 MS. CHAITMAN: Objection to form.

21 THE WITNESS: I don't know what you mean.

22 Q. (By Mr. Sheehan) No. In other words,  
23 you're taking history, all right, the trade that  
24 David just did and which he made a profit and now  
25 you're taking that and putting it into the customer

1 account --

2 A. No. I'm not.

3 Q. -- as though there's a real trade when  
4 there really wasn't a real trade?

5 A. I'm not -- I'm not putting it into the  
6 customer account, you know.

7 Q. Well --

8 A. Putting it into the customer account from  
9 the firm's trading account or inventory, not from  
10 David's account.

11 Q. But we were looking this morning at Mr.  
12 Blecker --

13 A. Right.

14 Q. -- and there is no fractional share until  
15 you actually convert, and yet you're showing a  
16 fractional share six weeks early. How could you do  
17 that unless you were backdating the trade?

18 A. It's -- look, I told you that I'm not sure  
19 how they -- look, if I am selling stock from the  
20 firm's -- if I set up a trade for Blecker, all  
21 right, and the firm came -- and it came out of the  
22 firm's inventory --

23 Q. Right.

24 A. -- it has nothing to do with David Kugel  
25 let's assume, the market maker. It's not in the

1 firm's inventory. All right. That stock got into  
2 the inventory from the market making, but now it's  
3 in the firm's inventory. And the firm -- we decided  
4 to keep -- I decided to keep that stock in the  
5 inventory. Now, anything that happens in that stock  
6 moving up and down is the profit to the firm. It  
7 has nothing to do with David Kugel. He sold it, his  
8 position that he sold to the firm.

9 Now the firm has that. It's not David's  
10 any longer. All right. Now, that inventory is in  
11 the firm's account. Now I'm turning around and  
12 selling that, you know, at the time that the prices  
13 that I bought it at to the client. That's an actual  
14 transaction from -- you know, from the firm's  
15 inventory to the client's inventory.

16 If, in fact, you know, I set it up with the  
17 -- with the intention of actually converting the  
18 security, all right, but, you know, I don't know how  
19 they -- if, in fact, they were going to convert the  
20 security, I don't know -- and they decide that if  
21 they actually were going to convert it, the client  
22 would be entitled to a fractional share.

23 They're going to give the fractional share.  
24 When they actually converted it, they would have  
25 gotten the equivalent of the fractional share. If



1 for some reason they never converted it, the  
2 customer would have gotten the fractional share  
3 anyhow or the monies for the fractional share.  
4 That's coming out of the firm's profit and loss.  
5 It's the firm's responsibility.

6 Q. But if it's not converted, there is no  
7 fractional share; is there?

8 A. Yeah, but let's say that the firm sold it  
9 to the client. All right. As far as the client is  
10 concerned, he'd be entitled to the fractional share.  
11 If I decided to swap it and not convert it, all  
12 right, I'm now buying the customer's position back  
13 from the customer. And, you know, the fact that the  
14 customer got the -- the customer is -- you know, is  
15 getting the profit as if it was actually converted.

16 Q. Well, I want to go back to something you  
17 said earlier. You were saying that say David does  
18 the trade, the convertible arbitrage.

19 A. Uh-huh.

20 Q. He then you say sells it to the firm, so  
21 the firm owns it; is that correct?

22 A. That's right.

23 Q. What does he sell it for?

24 A. What does he --

25 Q. Well, it still hasn't been converted or

1 unwound, so you don't know what the profit is. So  
2 what are you paying him for that?

3 A. I'm trying to explain something to you.  
4 The firm has positions, you know, in convertible  
5 securities in the firm's trading account, investment  
6 account. And then David has his market making  
7 account.

8 Q. Right.

9 A. It has nothing to do with the client. He's  
10 not buying -- it's not his stock that is going to  
11 the client until this -- until the firm takes the  
12 stock from David. Then the firm -- it's like two  
13 separate transactions. It's not -- it's not David.  
14 David has a market making account and he buys and  
15 sells in that and he may buy on a Monday and sell it  
16 out on Tuesday.

17 And while it's in his account, the profit  
18 and loss is David's. All right. If I now am taking  
19 that stock from David into the firm's account, then  
20 the profit and loss is mine and it has nothing to do  
21 with David.

22 Q. That's okay, but it's a stock. I'm not  
23 talking about --

24 A. Or convertible bond. It doesn't matter.

25 Q. But you don't know what the profit is until

1 you convert or unwind?

2 A. What profit are you talking about?

3 Q. The profit on the convertible arbitrage  
4 strategy.

5 A. For the customer?

6 Q. Yeah.

7 A. It's whatever -- then it's not the firm's  
8 account. It's the customer's account. Whatever  
9 we've set it up for the customer, that's his. If we  
10 converts it, then he's -- the price has already been  
11 -- the profit has already been determined based upon  
12 what he bought and sold at. All right.

13 If, in fact, I now unwind it for the  
14 customer, if I swap it out and I take it back, you  
15 know, from the customer and it goes back into the  
16 firm's account, then the customer -- you know, then  
17 it's the firm's position. In other words, you seem  
18 to -- you seem to not be grasping that the -- the  
19 fact that, you know, these are separate  
20 transactions, you know. If, in fact, I -- let's  
21 assume that I wanted to just short the transaction  
22 to a customer.

23 Q. Right.

24 A. All right. And I made a decision that --  
25 well, let's look at it this way. Let's assume the

1 customer calls me up and says I want to buy -- I  
2 want to buy this convertible bond. I want to do an  
3 arbitrage. Let's say the customer is making a  
4 decision. He says, you know, you know, I want to --  
5 I want to, you know, do arbitrage in Bancorp  
6 convertible bonds.

7 You know, I want you to go ahead and buy  
8 the Bancorp and sell the common stock and do the  
9 arbitrage. Okay. And I turn around and I say all  
10 right, you know what? I'll sell you that  
11 transaction. You know, I'm going to short it to you  
12 let's assume.

13 I'm going to short you the -- I'm going to  
14 short you -- rather than me go out into the open  
15 market and buy it, there's nothing to prevent me,  
16 you know, from selling it to the customer. I'm  
17 selling the convertible bond and I'm buying the  
18 stock from the customer. The customer is shorting  
19 me the stock and I'm buying the bond.

20 Q. Right.

21 A. Okay. Now, as far as the customer is  
22 concerned if he gives me instructions to convert it,  
23 you know, then we would physically have to -- you  
24 know, we would have to physically convert the stock.  
25 Now, if, in fact, I'm shorted to him, you know,

1 obviously, I can't to convert it because I shorted  
2 the position to him; but if the customer says, well,  
3 listen, I want to close out the transaction. So I  
4 said okay, I'll buy you -- I'll unwind this  
5 transaction for you. I'll buy your convertible bond  
6 and I'll sell you the stock that you were short.

7 And had we converted, I'm giving you a  
8 fractional share. I would owe you a fractional  
9 share. So I'm crediting the account with the  
10 transaction. Now, in that type of transaction the  
11 transaction never actually took place on a -- you  
12 know, it took place because as a market maker and  
13 dealer, I shorted the transaction to the customer.

14 As far as the customer is concerned, he  
15 makes the profit. He's that. If, in fact, I lost  
16 money, that's his -- that's my problem. He doesn't  
17 care about it.

18 So, you know, every transaction if you call  
19 up your brokerage firm at Merrill Lynch and you say  
20 I want to buy IBM, all right, and Merrill Lynch  
21 turns around and, you know, puts that order and puts  
22 it on the floor of the -- the floor of the exchange,  
23 the floor broker goes down into the specialist and  
24 says to the specialist I want to buy IBM. And IBM  
25 is trading -- you know, I look in the machine, it's

1 trading at, you know, 95. And the specialist, he  
2 doesn't have an inventory or he thinks that stock is  
3 overpriced at 95. So who shorted to the floor  
4 broker at Merrill Lynch? Merrill Lynch's floor  
5 broker reports to you. You just bought IBM and long  
6 it.

7 Q. Right.

8 A. Okay. The transaction never took -- never  
9 took place. It took place because the specialist  
10 shorted it to you, you know. As far as you're  
11 concerned, Merrill Lynch treated you as an agency.  
12 Merrill Lynch charges you a commission. All right.  
13 And anything that happens that you can sell that  
14 stock tomorrow or in two days, the specialist,  
15 that's his problem. He's short the stock to you.

16 Q. Yeah. It's his --

17 A. No different than like if I --

18 Q. Okay.

19 A. If you ask the average client that I told  
20 you yesterday, you know, when you put an order in  
21 that you buy IBM or Microsoft, that customer I  
22 guarantee you, you ask him what happens in that  
23 transaction. He will tell you, well, I bought  
24 shares in IBM. And IBM, he thinks that IBM got that  
25 money.

1 I guarantee you that's -- because I know  
2 that because there have been surveys taken.  
3 Customer thinks that when he buys IBM, that IBM, he  
4 bought the shares from IBM.

5 Q. Right.

6 A. That's what he thinks.

7 Q. I understand.

8 A. Okay. He didn't buy it from IBM.

9 Q. I know that.

10 A. Okay. I know you know it, but I'm telling  
11 you the -- what I'm trying to tell you, what I think  
12 you're having a hard time grasping is whether or  
13 not, look, you think that if, in fact, for some  
14 reason if I wanted to short all of these  
15 transactions to these customers --

16 Q. Yeah.

17 A. -- you would think that these transactions  
18 never took place. That's not true. They took  
19 place. Now, we don't short. We'd short some stocks  
20 to customers clearly, but whether it be convertible  
21 bonds or arbitrage.

22 Q. Right.

23 A. Sometimes we short them, which is perfectly  
24 normal, and sometimes we buy them. The transaction  
25 as far as the customer is concerned, he has a real

1 transaction.

2 Q. Yep. I understand.

3 A. Okay.

4 Q. Let's turn to the Madoff exemption.

5 A. What?

6 Q. The Madoff exemption.

7 A. Okay.

8 Q. Are you familiar with that term?

9 A. Yes.

10 Q. What is the Madoff exemption?

11 A. The Madoff exemption is that market makers  
12 are allowed to short stock.

13 Q. Can they short stock in market making  
14 transactions?

15 A. Anywhere they want.

16 Q. So they can also -- does a market maker  
17 normally deal with customers?

18 A. Sure.

19 Q. All right. Aren't they -- they're  
20 operating then as what, broker-dealer?

21 A. Uh-huh.

22 Q. You're not a market maker in that capacity?

23 A. All market -- the definition of a market  
24 maker is someone that -- that puts out a two-sided  
25 quote in a security and publishes his bids and



1 offers in a vending service. And he's obligated to  
2 honor his quote. He stands ready to buy or sell.

3 MR. SHEEHAN: All right. Okay.

4 MR. GOLDMAN: We can take a -- what to  
5 take a --

6 MR. SHEEHAN: We'll do it now; all right?  
7 Yeah. Only because I may be able to eliminate some  
8 stuff, which would be a good thing because we've  
9 covered a lot of territory.

10 THE VIDEOGRAPHER: Going off the record.  
11 The time is 10:58 a.m.

12 (A recess was taken.)

13 THE VIDEOGRAPHER: Back on the record.  
14 This begins disc Number 2. The time is 11:14 a.m.

15 Q. (By Mr. Sheehan) Mr. Madoff, while we were  
16 off the record you indicated you wanted to explain  
17 something to me?

18 A. Yeah.

19 Q. Go right ahead.

20 A. I just want to explain that when we are  
21 doing a transaction for -- an arbitrage transaction  
22 for a customer in a convertible and we set the  
23 transaction up for the customer as if it was going  
24 to be converted, all right, I'm not sure how they --  
25 as I say, I don't know how they handled the

1 fractional shares during certain times periods; but  
2 they may -- they may determine that the customer is  
3 going to get that fractional share if, in fact, the  
4 transaction was converted.

5 All right. So they may -- they may credit  
6 the customer with a fractional share knowing that  
7 they're going to convert it or that's what the plan  
8 is to convert. If for some reason at a later date  
9 they decided not to convert it, they swapped out the  
10 transaction, the customer really should get the  
11 fractional share because the fact that we decided to  
12 not convert it but we decided to unwind the  
13 transaction or swap the transaction, the customer if  
14 we didn't credit the customer with the fractional  
15 share, we'd be disadvantaging the customer. Now, so  
16 they may determine to do the fractional share before  
17 the transaction is actually converted because it may  
18 not be converted, but they would -- they typically  
19 would do that or they could wait.

20 If we wanted to we could theoretically if  
21 we unwound the transaction and not convert the  
22 transaction, we wouldn't have to give the customer  
23 the fractional shares. So but that's the firm's  
24 decision to make when they do it. I don't know how  
25 they particularly handle that because that's not my

1 area, but it doesn't mean any -- the fact that --  
2 the fact that we credited a customer with a  
3 fractional share but physically never converted it  
4 does not -- does not demonstrate anything other than  
5 the fact that the transaction was not converted. It  
6 was -- you know, or that it could have been -- it  
7 could have been converted.

8 We could have credited them before the  
9 conversion actually took place. The firm would have  
10 gotten -- would have gotten the fractional share  
11 that would have been covering the course that he did  
12 it. It doesn't -- you seem to be going down a path  
13 with this fractional share as if it has some sort of  
14 significance, but it doesn't.

15 Q. Well, just to follow up on that --

16 A. Okay.

17 Q. -- if the fractional share is credited on  
18 the day the preferred is purchased --

19 A. Correct.

20 Q. It was the preferred in the example.

21 A. Whatever.

22 Q. All right. It's computed on that day;  
23 correct?

24 A. Uh-huh.

25 Q. So now it's sold six weeks later; right?

1 A. (Witness nods head.)

2 Q. You're supposed to mark that to market?

3 A. What? The fractional share?

4 Q. Yeah. Aren't you?

5 A. No. It's a cash transaction.

6 Q. Okay.

7 A. And he doesn't have to. He doesn't have --

8 Q. Wait a second. I'm sorry. You're right,  
9 you're right. But you would mark the short sale to  
10 market?

11 A. The short position is marked to market,  
12 right.

13 Q. Okay. How would you know what the  
14 fractional share is six weeks later?

15 A. The fractional share is determined as if,  
16 in fact, it was converted. It has nothing to do  
17 with -- you're not getting -- actually, you're not  
18 getting actually shares. You determine what -- what  
19 the fractional share would be entitled to based upon  
20 what it was -- what it was sold at the date that it  
21 was sold.

22 Q. I guess my question is why would you give  
23 them a fractional share on the day you buy the  
24 preferred, right, when you may own one?

25 A. You're not getting -- you're not actually

1 getting shares. You're getting --

2 Q. Cash?

3 A. You're getting cash for it.

4 Q. Right.

5 A. Based upon what you would have gotten had  
6 you converted it.

7 Q. I mean, you didn't convert it. Why would  
8 you give it to them?

9 A. Because if, in fact, we had converted it,  
10 the customer would be entitled to it. So, you know,  
11 I don't know how to explain it to you.

12 Q. Isn't it also possible that you were  
13 backdating that trade and you knew what the  
14 fractional share was when you put in the entry for  
15 the purchase of the convertible arb?

16 A. No. It's not -- when you say backdating  
17 it, they're establishing the price based upon what  
18 the stock was selling for at the time that they did  
19 the transaction. You know, if, in fact -- if  
20 they're giving the fractional share before the stock  
21 went to conversion, they have to determine what the  
22 price that -- what the price the customer would be  
23 entitled to. They're using -- I'm assuming they're  
24 using it, the price that they set the transaction up  
25 at.

1 Q. Can you tell me why you only had paper  
2 customer statements and electronic access?

3 A. When?

4 Q. Forever.

5 A. What do you mean? Like, well --

6 Q. Did your customers ever have electronic  
7 access to their accounts?

8 A. No, no.

9 Q. Isn't that because you were backdating?

10 A. First of all, you're talking about this  
11 period, '83. There was no electronic access.

12 Q. Well, in 2008 there wasn't either. Doesn't  
13 mean you weren't backdating in 1984. What I'm  
14 saying is you used paper statements for a reason;  
15 didn't you?

16 A. What do you mean paper statements?

17 Q. Because you could -- you could create fake  
18 trades over a period of days?

19 A. Wait. What? I'm not sure.

20 Q. It's not that confusing.

21 A. What?

22 Q. It's pretty simple. In other words, you  
23 wouldn't give anybody electronic access because you  
24 wouldn't control --

25 A. You couldn't get electronic access until

1 certain dates.

2 Q. I understand that.

3 A. Right.

4 Q. But even before that you just continued  
5 what you had been doing before, that is, those  
6 trades were trades that had already happened and you  
7 put them as phony trades into the customer accounts  
8 days later, right, and then used other people's  
9 money?

10 A. I'm not sure what --

11 MR. GOLDMAN: I'm going to object to this.  
12 Ask him a question, don't make a statement. Ask him  
13 a question.

14 THE WITNESS: Right.

15 MR. SHEEHAN: You can object all you want  
16 and I'm going to ask my question.

17 MR. GOLDMAN: Well, you didn't ask a  
18 question. That was the problem.

19 MR. SHEEHAN: No. Peter --

20 MR. GOLDMAN: Yeah.

21 MR. SHEEHAN: -- try to relax. All right.  
22 I'm going to ask it the way I want to. The judge  
23 can rule on what he's saying.

24 THE WITNESS: Okay.

25 MR. SHEEHAN: All right. I'm asking you a

1 question.

2 THE WITNESS: Uh-huh.

3 Q. (By Mr. Sheehan) All right. Isn't it true  
4 that you backdated these trades?

5 MS. CHAITMAN: Objection to form.

6 THE WITNESS: Which trades are you  
7 referring to?

8 MR. SHEEHAN: There's no objection to  
9 form.

10 THE WITNESS: Which trades are you  
11 referring to?

12 Q. (By Mr. Sheehan) You backdated trades? In  
13 1984 you were backdating those trades?

14 A. No, no.

15 Q. Those convertible arbs never happened?

16 A. That's not true.

17 Q. All right. And that's why your statements  
18 show transactions that couldn't have happened until  
19 six weeks later, you're showing them on the day of  
20 the trade; isn't that true?

21 A. No.

22 Q. Do you know that there's hundreds of these?  
23 This isn't an operational flaw. Do you know that?

24 A. I'm not saying it's an operational flaw.

25 Q. You're saying you did that as a matter of



1 course?

2 A. What I'm telling you is I'm not familiar  
3 with what their procedure was with fractional shares  
4 of how many --

5 Q. You ran the company. You didn't know?

6 A. I don't know. I'm not part of the  
7 operations department.

8 Q. Didn't you tell us that nobody dealt with  
9 customers those years except you?

10 A. Nobody did what?

11 Q. Nobody dealt with the customers except you  
12 in those years, '80s?

13 A. I dealt with the customers when we --  
14 when -- I spoke to the customers. I didn't  
15 physically handle the bookkeeping transaction for  
16 the customers ever.

17 Q. You wouldn't look at the customer  
18 statements?

19 A. The customer statements after -- no. I  
20 mean, I looked at customer statements after they  
21 were generated.

22 Q. But would you talk to the customer about  
23 them?

24 A. I first for the most part never spoke to  
25 the customers.

1 Q. Uh-huh.

2 A. I mean, very -- you know, customers would  
3 never call me up and ask me to, you know, discuss  
4 their statement with them because I -- you know, I  
5 never looked at their customer statements. The  
6 statements were generated by the operations  
7 department. It was not something that I would --  
8 that I would discuss with the customer, you know,  
9 nor did I -- nor did I generate anything.

10 Q. Right, okay. Let's move on.

11 A. Okay.

12 Q. Let me show you -- what is it? Four?

13 MS. FEIN: Four.

14 (Trustee's Exhibit Number 4 was marked for  
15 identification.)

16 Q. (By Mr. Sheehan) Exhibit 4. Before I get  
17 it wrong, I think it -- how many pages is it? Four?

18 MS. FEIN: We'll just do the two, two  
19 pages.

20 MR. SHEEHAN: Okay. All right. Fine.  
21 But they're front and back.

22 MS. FEIN: Yeah. And your copy there, and  
23 it's the first two. I can take the rest out.

24 MR. GOLDMAN: What do you want us to hold?

25 MR. SHEEHAN: Just the first two are the

1 ones we're doing.

2 MR. GOLDMAN: Do you want the others back?

3 MR. SHEEHAN: No, no. Keep everything.  
4 You can keep everything. We don't want anything  
5 back. Before we talk about these, you can look at  
6 them, Mr. Madoff. I don't mean to interrupt you.

7 THE WITNESS: Uh-huh.

8 Q. (By Mr. Sheehan) Do you remember you were  
9 -- you showed us Mr. Blecker's at your deposition --  
10 I'm sorry. Let me rephrase that. Back on  
11 December 20th you showed us Mr. Blecker's 2005  
12 statement. Do you remember that?

13 A. Uh-huh.

14 Q. And on the back of it it had language with  
15 regards to average pricing. Do you remember that  
16 testimony?

17 A. I'm not sure I understand your question  
18 again.

19 Q. Well, in other words, on the back of Mr.  
20 Blecker's 9-2005 statement there was language from  
21 your company that said that you would -- you could  
22 engage in average pricing with regard to the  
23 transactions?

24 A. On the Blecker statement I never saw the --  
25 what the language was.

1 MR. SHEEHAN: Okay. Then let's show it to  
2 you. What's that? So here we go, Peter. I'm  
3 sorry.

4 MR. GOLDMAN: That's all right.

5 MR. SHEEHAN: You've already got those  
6 two.

7 Q. (By Mr. Sheehan) All right. So we've now  
8 handed you what was marked as Exhibit Number 8 on  
9 December 20th, 2016. Bless you. And I refer you to  
10 the second page. And it's the second paragraph and  
11 I believe it is the second sentence starting with  
12 the word unless. Do you see that?

13 A. What are we looking at? The Blecker  
14 statement?

15 MR. SHEEHAN: Yes.

16 MR. GOLDMAN: I think it's mixed up.  
17 Which one is the Blecker statement?

18 MS. CHAITMAN: It doesn't appear to be the  
19 Blecker statement.

20 Q. (By Mr. Sheehan) Okay. If you're  
21 looking -- you should be looking at this that's got  
22 a redaction on the front of it.

23 A. Okay.

24 Q. And it has an exhibit sticker on it. You  
25 see that --

1 A. Uh-huh.

2 Q. -- over here? Yeah.

3 A. Yeah.

4 Q. Okay. So if you turn to the second page of  
5 that, Mr. Madoff --

6 A. Uh-huh.

7 Q. -- you'll see that this was actually on the  
8 back of that.

9 A. Okay. I got it, yeah.

10 Q. Okay. And if you look at that and you go  
11 to this second paragraph where it starts off  
12 customer equity transaction --

13 A. Correct.

14 Q. -- do you see that? Okay. It says on the  
15 second sentence, and I'll just read it into the  
16 record, quote, unless stated otherwise on the front  
17 of this confirmation, comma, the trade price of your  
18 transaction is an average price and includes a  
19 commission equivalent of .4 cents per share, period.

20 A. Right.

21 Q. Do you see that?

22 A. Uh-huh.

23 Q. Okay. That's what I was referring to.

24 A. Oh, okay.

25 Q. Do you remember testifying to that back on

1 December 20th?

2 A. Right.

3 Q. Okay. So with that background I wanted to  
4 direct your attention to what has now been marked as  
5 Exhibit 4, which I believe is right in front of you.

6 A. Uh-huh.

7 Q. Take a look at those statements and tell me  
8 if there's any language on those that talks about  
9 average pricing; all right? Not that one, the two  
10 in front of you.

11 A. Oh, oh.

12 Q. Yeah. Just go to the --

13 A. Okay. I see it.

14 Q. See that?

15 A. Uh-huh.

16 Q. All right.

17 A. There is no average. There's no -- there  
18 is no language about average price nor is there  
19 language of what the commission equivalent is  
20 because that language was changed based upon rules  
21 that the industry has stated you now had to -- you  
22 now had to put that language on the confirmation.

23 Q. Were you, in fact, doing average pricing in  
24 -- in front of you is a good one. August 7, '84,  
25 which is the date on Exhibit 4.

1           A. I'm assuming that it was an average price.  
2       Again, it depends upon how many -- how many shares  
3       we were buying and selling at that -- it could have  
4       been average price. It could not have been average  
5       price.

6           Q. Did you advise your customers other than --  
7       yeah. Did you -- I mean, did you advise your  
8       customers in 1984 that you were using average  
9       pricing?

10          A. If, in fact, we were using an average  
11       price, no. You know, we wouldn't necessarily  
12       because it wasn't required to -- they changed the  
13       language. The SEC changed the language that had to  
14       be on confirmations regarding, you know, average  
15       price or commission equivalent and so on. In other  
16       words, they changed the language that you had to do  
17       it.

18                So there are -- if there was no language  
19       about average price on there, it wasn't required to  
20       put on there. The same thing that they changed the  
21       language about putting whether a commission  
22       equivalent. They never used to have -- use the term  
23       commission equivalent for a mark-up.

24                They would just -- in other words, they  
25       allowed you to put language on the -- they told you

1 to put language on the confirmation that said you  
2 were not charging a commission or not charging a  
3 mark-up, which you aren't charging a commission  
4 equivalent, which was a mark-up.

5 Q. Okay.

6 A. They just changed the requirements. That's  
7 why there's no language that -- you know, on the  
8 earlier transaction. Was no requirement I should  
9 say.

10 MR. SHEEHAN: Okay. Thanks. Are we --  
11 okay. Whoops. It's knocking over. Got too many  
12 statements.

13 MS. FEIN: Yes.

14 MR. GOLDMAN: Too small a desk.

15 MR. SHEEHAN: That's for sure.

16 (Trustee's Exhibit Number 5 was marked for  
17 identification.)

18 Q. (By Mr. Sheehan) Okay. Now, Ms. Fein is  
19 now handing you exhibit -- what's been marked  
20 exhibit -- Trustee's Exhibit 5. Take your time,  
21 take a look at that.

22 A. Uh-huh.

23 MS. FEIN: I'm sorry.

24 MR. GOLDMAN: That's all right. No one is  
25 going anywhere.



1 THE WITNESS: Okay.

2 Q. (By Mr. Sheehan) Just starting right on  
3 the first page of that, see in the upper left-hand  
4 it says originator number? Do you see that?

5 A. Right.

6 Q. And it says 0646?

7 A. Uh-huh.

8 Q. What does that represent, if you know?

9 A. That's our clearinghouse number.

10 Q. And you previously answered that's the only  
11 number you've had?

12 A. Yes.

13 Q. Okay, okay. Just this is more for  
14 informational purposes. Where is that? It's here  
15 somewhere. Oh, there it is.

16 MS. FEIN: Yes.

17 Q. (By Mr. Sheehan) Again, recalling your  
18 earlier testimony, Mr. Madoff, do you remember at  
19 one point suggesting that a convertible security  
20 could be flat?

21 A. Could be flat?

22 Q. Flat.

23 A. No.

24 Q. Meaning that -- well --

25 A. Oh, trading without interest you're talking

1 about?

2 Q. Thank you.

3 A. Right.

4 Q. All right. That's what I meant.

5 A. Uh-huh.

6 Q. Take a look at page -- we are trying to --

7 MS. FEIN: It ends in 651. It's the

8 second to last page, I think.

9 Q. (By Mr. Sheehan) Yeah. It's the second to  
10 last page. It looks like this right here. Do you  
11 see that? It's a Trans World Airlines. What does  
12 that entry mean to you?

13 A. Trans World Airlines subordinated  
14 convertible directions. Is that what you're looking  
15 at?

16 Q. Yes.

17 A. What's your question? What does it mean to  
18 me?

19 Q. Yeah. Well, look below that and it says  
20 interest. Do you see that?

21 A. Uh-huh.

22 Q. Just an entry. Does this mean that this  
23 was not a flat trade?

24 A. I assuming it's accrued interest. Bonds  
25 trade, you know, that's -- you know, that's the

1 interest that the bond had paid and you have to  
2 credit the customer with that.

3 MR. SHEEHAN: Okay. That's all I had.

4 THE WITNESS: Uh-huh.

5 MR. SHEEHAN: What? What more do you  
6 want.

7 (Discussion off the record.)

8 Q. (By Mr. Sheehan) Not going back there.  
9 I've done enough on fractional shares.

10 A. Fractional shares.

11 Q. I don't think anybody could handle another  
12 fractional share.

13 A. Right.

14 Q. Slowly I turn. Anyhow, all right. We made  
15 progress on that break, eliminated a lot here. So  
16 let's turn to a different topic, margin accounts.  
17 We've been talking about those, but could you tell  
18 me your understanding of what a margin account  
19 means?

20 A. What is a margin account?

21 Q. What is a margin account?

22 A. A margin account is if a customer is  
23 buying -- you know, is borrowing money from the  
24 brokerage firm to buy stock. So he has a margin  
25 account, you know. If, in fact, the customer wants

1 to buy a thousand dollars worth of stock and only  
2 has \$500, he'd borrow the other \$500 from the  
3 brokerage firm.

4 Q. Okay.

5 A. That's one type of margin. Then there's  
6 the type of margin if the customer wants to -- wants  
7 to -- is pledging with the brokerage firm securities  
8 to cover his -- his short exposure on the stock.

9 Q. Are there government regulations with  
10 regard to margin accounts?

11 A. Based upon how much -- how many -- how much  
12 credit you can give the customer based upon let's  
13 say 50 percent margin.

14 Q. Okay. Does the term regulation T mean  
15 anything to you?

16 A. Regulation T means what -- typically what a  
17 customer has to pay for the stock within a certain  
18 amount of days after he buys it.

19 Q. Buys it on margin?

20 A. Hmm?

21 Q. Buys it on margin?

22 A. Whether margin or cash, doesn't matter.

23 Q. Okay.

24 A. When a customer has to pay for the stock  
25 that he bought, how many days.

1 Q. The 50 percent margin you talked about a  
2 moment ago, does that derive from reg T?

3 A. Does it what?

4 Q. Derive from regulation T?

5 A. I'm not sure. You know --

6 (Trustee's Exhibit Number 6 was marked for  
7 identification.)

8 Q. (By Mr. Sheehan) Okay. That's fine. I'm  
9 going to show you a series of customer statements.

10 A. Uh-huh.

11 Q. We've redacted the name of the individual  
12 because it's one of the big four.

13 A. Uh-huh.

14 Q. Doesn't matter who his name is. I just  
15 want to ask you about the entries on it with regard  
16 to the margins; okay? And it is marked as  
17 Exhibit 6. Is that all of the pages?

18 MS. FEIN: Uh-huh.

19 MR. SHEEHAN: Okay.

20 THE WITNESS: Is this for a '93  
21 transaction?

22 MR. SHEEHAN: It's actually an '83.

23 THE WITNESS: '83, yeah. I see.

24 Q. (By Mr. Sheehan) If you turn the page, the  
25 copies are better, but these are all in 1983; all

1 right?

2 A. Oh, okay. Uh-huh.

3 Q. Pardon?

4 A. Yeah.

5 Q. And '80 -- it actually ends, I think the  
6 last one is --

7 A. Some are '93, some are '83.

8 MR. GOLDMAN: Going to have to get halfway  
9 before you get to '84.

10 THE WITNESS: The top page is '83 and then  
11 it's '93 and then there's '83.

12 Q. (By Mr. Sheehan) I think the '90s are  
13 where the account gets closed out, but I think this  
14 is the history of the account from the beginning to  
15 the end; right?

16 A. Uh-huh.

17 Q. So take a moment to look and I'm going to  
18 be asking you principally about the margins here --

19 A. Right.

20 Q. -- but some other questions as well.

21 A. Uh-huh.

22 Q. So just to get us grounded, let's look at  
23 the first page of this exhibit. And just so we all  
24 know about what that first page is, it is the Bates  
25 number ends in it's MF 248. And directing your

1 attention to the August 23 entry, what do you see  
2 that to be?

3 A. A check you mean?

4 Q. Yes.

5 A. Looks like the customer sent in a check for  
6 \$1,500,000.

7 Q. Okay. And then what's the next entry?

8 A. The purchase of American Telephone.

9 Q. Yes.

10 A. Uh-huh.

11 Q. Just short of a million five; right?

12 A. Right, uh-huh.

13 Q. And that's the end position as well?

14 A. Right.

15 Q. Okay. So then turning to the next month,  
16 next month is -- we were in August. Now we're in  
17 September of '83?

18 A. Uh-huh.

19 MS. CHAITMAN: I just want to say this  
20 looks like it's 8-31-93. You're saying you're sure  
21 it's 8-31-83?

22 MR. SHEEHAN: Yes. It is.

23 MS. FEIN: And you can tell based on the  
24 statements following it as well, but it's true that  
25 the first page is less clear.

1 MS. CHAITMAN: Because the Bates number  
2 isn't consecutive.

3 MS. FEIN: No. They're not. They're not  
4 kept that way every time, so --

5 MR. SHEEHAN: I haven't misrepresented  
6 anything in a week, so pretty safe that this is '83.  
7 All right?

8 MS. CHAITMAN: Okay. I was just --

9 Q. (By Mr. Sheehan) All right. So next page  
10 is September 30, '83. And we see there what's the  
11 first entry there on September 29th?

12 A. Check for \$250,000 debit, needs to be sent  
13 a check for \$250,000.

14 Q. Did any other transaction take place that  
15 month?

16 A. Doesn't look like it.

17 Q. And did you charge him interest for that?

18 A. Seems to be an interest, yeah, \$154.

19 Q. Okay.

20 A. It says margin interest.

21 Q. Thank you. Okay. Now, let's go to the  
22 next one, which is October 31, '83.

23 A. Uh-huh.

24 Q. And you're charging interest again on the  
25 250; are you not?



1 A. Right.

2 Q. Okay. Let's go to the -- actually, we can  
3 skip a page or two. These are all consecutive  
4 months. We're now in December 30th, '83. Do you  
5 see that up in the upper left-hand corner, December  
6 '83?

7 MS. FEIN: Bates ending in 301.

8 MR. SHEEHAN: Yeah. It's one, two, three,  
9 four, five. It's the sixth page in.

10 THE WITNESS: Okay, right.

11 Q. (By Mr. Sheehan) And there's several  
12 entries there?

13 A. Uh-huh.

14 Q. Is there another check issued to this  
15 customer?

16 A. Uh-huh.

17 Q. How much?

18 A. Capital -- it says CW, \$250,000.

19 Q. Yes.

20 A. Right.

21 Q. What does CW stand for?

22 A. Capital withdrawal.

23 Q. Now, with respect to these two borrowings  
24 against the margin account, has any stock been  
25 purchased with that money?

1 A. I don't know. I'll have to look at the  
2 account. Are there transactions here?

3 Q. Yes, because at the very beginning the  
4 first one we looked at --

5 A. Uh-huh.

6 Q. -- the customer deposited a million five  
7 and then you -- and then the next or actually before  
8 that, I guess that was the payment for it, but  
9 before that on 8-19 you had purchased looks like 645  
10 shares of AT&T for an aggregate price of 1,499,840.  
11 Do you see that on the first page?

12 A. Uh-huh, uh-huh.

13 Q. All right. And then but then there are two  
14 borrowings against the margin account aggregating  
15 \$500,000 but no apparent stock being purchased. Do  
16 you see that?

17 A. Okay. So --

18 Q. All right. I'm just saying that you agree  
19 that that's what's there?

20 A. Not -- I can't say I agree with it. I'm  
21 not sure what the question is.

22 Q. Well, my question was was any of that  
23 \$500,000 used -- the statement seems to suggest that  
24 the million five that was deposited was used to  
25 purchase the stock; correct?

1 A. Right.

2 Q. And, therefore, and then after that  
3 \$500,000 was borrowed but not used to purchase any  
4 stock. So in effect it was borrowed against the  
5 existing position?

6 A. Okay.

7 Q. All right?

8 A. Uh-huh.

9 Q. That's what it appears?

10 A. Okay.

11 Q. All right, fine. So we then go through and  
12 we pick up in January of '84, which we can pass  
13 over. Then we have February of '84. And you're  
14 going to see something that you actually referred to  
15 yesterday?

16 MS. FEIN: Yeah, on page eight.

17 MR. SHEEHAN: Page eight.

18 MS. FEIN: Ending in 461 for the Bates.

19 MR. SHEEHAN: It's got a lot of entries.

20 THE WITNESS: Page eight. I don't --

21 MS. FEIN: 461 and it's February '84.

22 THE WITNESS: Okay.

23 Q. (By Mr. Sheehan) So do you see all those  
24 entries there?

25 A. Uh-huh.

1 Q. Do they mean anything to you? What I mean  
2 by that, what was happening?

3 A. This is showing what it was long -- what he  
4 was long in the account.

5 Q. Doesn't this reflect the break-up of AT&T?

6 A. I have no idea. I don't -- you know.

7 Q. Because originally you had a large  
8 position, about a million five, in AT&T?

9 A. Uh-huh.

10 Q. And it appears that now it's been broken up  
11 into different entities?

12 A. Right. This was when they were -- this was  
13 when they broke up the AT&T into the baby Bells, I'm  
14 assuming.

15 Q. Right.

16 A. Right.

17 Q. Okay. And then if you carry it over to the  
18 next page --

19 A. Uh-huh.

20 Q. All right. Which is the second page of the  
21 2-29 statement, you see the end positions; all  
22 right?

23 A. Uh-huh.

24 Q. Okay. Then go to the March 31st, which is  
25 the next one.

1 A. Uh-huh.

2 Q. And what you see there is what on 3-13?

3 A. Margin interest you're talking about?

4 Q. It's actually above that, the IBM  
5 purchase --

6 A. Okay.

7 Q. -- or short, actually.

8 A. Right.

9 Q. No, no. It was a purchase?

10 A. No. It's purchase.

11 Q. It's purchase.

12 A. Uh-huh.

13 Q. Yep.

14 A. Right.

15 Q. And then below that margin interest again  
16 being charged?

17 A. Uh-huh.

18 Q. So take a look at the end positions here.

19 A. Uh-huh.

20 Q. How much is the debit at that point?

21 A. You're talking about the 2 million?

22 Q. Two million one hundred and ten thousand,  
23 yeah.

24 A. Right, uh-huh.

25 Q. Is that the amount that -- is that the

1 amount owed to you?

2 A. Two million one ten?

3 Q. Yeah.

4 A. That looks like it's the value of the -- of  
5 the positions that are above it.

6 Q. Okay. All right. What does the million  
7 seventy-one thousand represent?

8 A. It must be the value of the short  
9 positions.

10 Q. Okay, okay. Let's look at April 30, '84.

11 A. Uh-huh.

12 Q. We've got you here charging margin  
13 interest?

14 A. Uh-huh.

15 Q. And there's another check issue, is there  
16 not, for 250?

17 A. Uh-huh.

18 MR. SHEEHAN: One second, please.

19 (Discussion off the record.)

20 Q. (By Mr. Sheehan) So let's go down to the  
21 end positions again --

22 A. Uh-huh.

23 Q. -- on this one. It's April 30. Let me see  
24 this. So the long positions are two million one  
25 ten?

1 A. Right.

2 Q. And when he said the column isn't short its  
3 difference, isn't the one million three thirty-six  
4 what is actually owed to you?

5 A. No. That would be the value of the short  
6 positions, mark to market on the short positions.

7 Q. Where are you accounting for the margin  
8 count here?

9 A. What do you mean where am I?

10 Q. Well, in other words, he's continuing to  
11 borrow money?

12 A. Right.

13 Q. Where do you show that on the statement?

14 A. You're talking about the margin interest?

15 Q. No. I'm talking about the margin, the  
16 amount he borrowed, the 250, the other 250s, et  
17 cetera. Where is that on the statement?

18 A. It's the statement is being debited.

19 Q. That's what I'm saying. Isn't the amount  
20 he borrowed, the 1,000,000 -- see it here, new  
21 balance?

22 A. Uh-huh.

23 Q. Let's go back up. Maybe it's easier this  
24 way. See the check and then the amount?

25 A. For \$250,000?

1 Q. Yeah.

2 A. Right.

3 Q. See, let's start at the very, very top. It  
4 says debit; right?

5 A. Uh-huh.

6 Q. Balance forward, a million seventy-one. He  
7 borrows another 250, the interest, and that all adds  
8 up to 1,336,234?

9 A. That's his new balance, right.

10 Q. Right. And that's the margin count, is it  
11 not, that he's borrowed?

12 A. That's the total debit.

13 Q. Yep.

14 A. Uh-huh.

15 Q. Okay. So let's just keep moving along  
16 and --

17 MR. GOLDMAN: You sort of lost me. Can I  
18 ask him?

19 MR. SHEEHAN: Yeah, sure.

20 MR. GOLDMAN: If you look at the opening  
21 balance on the 4-30 statement, it says opening  
22 balance of a million seventy-one balance forward.

23 MR. SHEEHAN: Right.

24 MR. GOLDMAN: Where does that -- is that  
25 reflected in the 3-31 closing? Oh, I see it. Okay.



1 Now I see it.

2 MR. SHEEHAN: You got it?

3 THE WITNESS: Yeah, okay.

4 Q. (By Mr. Sheehan) So let's jump forward to  
5 July 31, 1984. It's Bates number 84. Do you see  
6 it, Mr. Madoff?

7 MS. CHAITMAN: May be that next one.

8 Q. (By Mr. Sheehan) 7-31-84. Okay. Again,  
9 let's start with the debit. And you can see the  
10 carry forward of the million three twenty-nine?

11 A. Uh-huh.

12 Q. Which has gone up a little bit because of  
13 interest. Now there's another borrowing of 250,  
14 interest charged. Now the total borrowings are one  
15 million five ninety-eight. Do you see that?

16 A. Right. That's his debit balance.

17 Q. Now, at this point that borrowing is more  
18 than 50 percent. Remember you mentioned 50 percent  
19 earlier?

20 A. Uh-huh.

21 Q. Now it's more than 50 percent of the value  
22 of the stock he holds.

23 A. Uh-huh.

24 Q. What are you supposed to do?

25 A. Well, first of all, these accounts are

1 probably cross -- if these are the big four  
2 accounts, they were cross-margined, so you'd have to  
3 look at all of his accounts. Here they'd  
4 cross-margin accounts, which means he's borrowing --  
5 you know, you'd have to compile all of his accounts,  
6 his family accounts, because they -- they're handled  
7 as a joint account.

8 Q. There were a lot of accounts. I didn't  
9 bring them all here.

10 A. Yeah.

11 Q. Just for purposes of our discussion, assume  
12 the cross-margin would be more than 50 percent.  
13 What should you do at that point?

14 MS. CHAITMAN: Objection to form.

15 THE WITNESS: I'm confused as to what the  
16 question is.

17 Q. (By Mr. Sheehan) Well, let me put it a  
18 different way. If the debit balance exceeds  
19 50 percent, isn't a broker at that point supposed to  
20 call upon the customer to deposit more cash?

21 A. Typically you would call them for  
22 additional cash, yeah.

23 Q. Right, okay.

24 A. And, again, it depends upon -- the  
25 50 percent margin depends upon whether or not he

1 has -- the account is hedged and he has -- you'd  
2 have to look at -- you can't just look at one  
3 account. You have to look at of all the accounts.  
4 They'd have to look at the type of positions he has  
5 and whether there were -- there were arbitrage  
6 positions set up upon it. You can't just look at  
7 one isolated account.

8 Q. Okay. So now let's go to October 31, 1984.  
9 If we could -- yeah, October.

10 MS. CHAITMAN: Okay.

11 THE WITNESS: Uh-huh.

12 Q. (By Mr. Sheehan) Do you see starting again  
13 with debit, it's now a million five ninety-eight?  
14 Customer borrows other 450. There's an interest  
15 charge of \$22,000. The entire debit is now over two  
16 million dollars. Do you see that?

17 A. Uh-huh.

18 Q. Which is almost 100 percent of that  
19 balance?

20 A. Uh-huh.

21 Q. So your testimony is that you would have to  
22 look at the cross-margin here?

23 A. Yeah. You have to look at, you know -- at  
24 -- if, for example, if he has -- you know, you can't  
25 just look at this account. He may be overmargined

1 in this account, but if he has other securities in  
2 another account, you know, you'd have to, you know,  
3 equate that to that as well.

4 Q. All right. So let's go to 12-31-84.  
5 Again, on the debit side what we see is two million  
6 fifty-nine; right?

7 A. Uh-huh.

8 Q. Another \$750,000 is borrowed, interest is  
9 charged, and there's now a new balance of two  
10 million eight twenty-five. Do you see that?

11 A. Okay. I'm assuming that you're correct.  
12 I'm not following it, but go ahead.

13 Q. Okay. It's -- well, why don't we get you  
14 to the right page?

15 MS. CHAITMAN: Hold on, hold on.

16 THE WITNESS: I'm assuming that the  
17 statements are correct.

18 Q. (By Mr. Sheehan) All right, fine. I'm not  
19 actually testing that. I just wanted to ask you a  
20 few questions and, unfortunately, sometimes you have  
21 to lay a foundation. So here you go.

22 A. Okay.

23 Q. So if you look at the end positions here,  
24 now the stock position is two million one ten. And  
25 you've got a margin that far exceeds that at two

1 million eight twenty-five. Do you see that?

2 A. Uh-huh.

3 Q. Are you saying that even with a pre --  
4 because of cross-margin, you would allow this kind  
5 of borrowing to take place against two million  
6 dollars?

7 A. I'm assuming -- again, saying this is not  
8 my area, but I'm assuming that if, in fact, you  
9 know, that he had enough -- enough equity in the  
10 account to cover whatever he was borrowing.

11 Q. Right.

12 A. But you'd have to look at, you know, all of  
13 the accounts of the family if, in fact -- you know,  
14 because that's how they were cross-margined. So you  
15 can't look at one account. You'd have to -- you  
16 know, so for me to look at this would be meaningless  
17 to me. You'd have to take a picture of all of -- of  
18 all the accounts that he had.

19 We generally would not -- would not be  
20 lending the -- buying more securities than the  
21 customer had enough equity to cover his marginal  
22 requirements.

23 Q. Right.

24 A. But he had other accounts that he just had  
25 -- he could have had just long positions in there

1 that, you know, there were no borrowing against, but  
2 that's the purpose of a cross-margin agreement.

3 Q. Right. Let's go to 13185, which I think is  
4 the next page if you would. See it up in the  
5 left-hand corner? I think it's 13185.

6 MS. CHAITMAN: It's the next page, yes.

7 THE WITNESS: Okay.

8 Q. (By Mr. Sheehan) See the balance carried  
9 forward of two million eight twenty-five is a debit?

10 A. Right.

11 Q. Again, a January margin interest payment --  
12 charge?

13 A. Uh-huh.

14 Q. But the new balance is two three  
15 forty-nine?

16 A. Uh-huh.

17 Q. Could you look down the statement --

18 A. Uh-huh.

19 Q. -- and can you see what transpired this  
20 month that caused a reduction in the debit?

21 A. Right.

22 Q. What is it?

23 A. You're talking about what the market value  
24 of the positions he has, the two million one ten?

25 Q. Yes.

1 A. Okay.

2 Q. So how does the debit go from two eight two  
3 five to two three four nine; right?

4 A. Which was that went down because of the --  
5 well, first of all, there was a short. There was a  
6 sale and then there was also margin interest. I'm  
7 assuming the -- I'm assuming the debits and credits  
8 were correct because that's generated by the  
9 computer, so --

10 Q. But the end position seems to be the same,  
11 two million one ten?

12 A. Yes.

13 Q. Yet there's been a reduction?

14 A. There's been a market value of those listed  
15 positions.

16 Q. Right. But how did we go down to two three  
17 four nine? Do you see an entry that would explain  
18 that?

19 A. That's the value of the short position.

20 Q. Okay. Well, I think we've salvaged as to  
21 debit. Let me take you up to the top here. Do you  
22 see where -- we had debit. Now look at credit. Do  
23 you see that?

24 A. The what?

25 Q. There's a credit there of \$500,000. Do you

1 see it?

2 A. Yes. That means that --

3 Q. Does that represent payment by the  
4 customer?

5 A. Yes. It means caption addition. It means  
6 a check --

7 Q. That would reduce the --

8 A. A check must have come in, right.

9 MR. SHEEHAN: All right. Thanks.

10 MR. GOLDMAN: That was an easy one.

11 MR. SHEEHAN: Yeah. Let's see. I got it.

12 MR. GOLDMAN: Wait a minute. I have a  
13 question for you, though.

14 MR. SHEEHAN: Yeah, sure.

15 MR. GOLDMAN: The document starts off up  
16 where it says redacted --

17 MR. SHEEHAN: Right.

18 MR. GOLDMAN: -- and it says right next to  
19 it, it might new be an internal control from the  
20 Trustee, but it says 9525.

21 MS. FEIN: Which page are you on?

22 MR. SHEEHAN: The Social Security number,  
23 we always redact part of that.

24 MR. GOLDMAN: The 9525?

25 MR. SHEEHAN: Yeah. I'm pretty sure



1 that's what that is.

2 MR. GOLDMAN: But if you go ahead a couple  
3 of pages, it changes.

4 MR. SHEEHAN: Oh, yeah?

5 MR. GOLDMAN: Go to --

6 MR. SHEEHAN: Maybe I'm wrong then. I  
7 don't really know, but --

8 MR. GOLDMAN: Go to December and it  
9 becomes 5965.

10 MR. SHEEHAN: Yeah. I see that. Yeah. I  
11 see that.

12 MR. GOLDMAN: Yeah.

13 MR. SHEEHAN: Okay.

14 MR. GOLDMAN: But is the account number  
15 the number at the very top?

16 MR. SHEEHAN: Yes. The account number  
17 never changes.

18 MR. GOLDMAN: Yeah. Well, that was the  
19 inconsistency I saw, so I didn't know why.

20 MR. SHEEHAN: Okay. Well, that's worth  
21 noting and we'll certainly look into it, but these  
22 are all from the same account.

23 MR. GOLDMAN: Okay.

24 MR. SHEEHAN: So --

25 THE WITNESS: Cold again.

1 MR. GOLDMAN: Are you cold?

2 MR. SHEEHAN: No, no. I want to ask him a  
3 couple of questions.

4 MS. FEIN: Yeah, okay.

5 Q. (By Mr. Sheehan) Now, Mr. Madoff, in 1984  
6 did you file focus reports?

7 A. We always filed focus reports, yes.

8 Q. Okay. And I believe your testimony was,  
9 and correct me if I'm wrong, prior to 1992 your  
10 focus reports were always accurate?

11 A. No.

12 Q. No. So correct me. What was -- what was  
13 not accurate prior to 1992?

14 A. The -- when the --

15 Q. Let me restate the question. I may have  
16 gone too fast.

17 A. Yeah.

18 Q. Okay. And we can look it up, but I'm  
19 pretty sure your testimony was that prior to 1992  
20 all of your focus reports were accurate. Is that  
21 true?

22 A. Okay.

23 Q. Is that true?

24 A. No.

25 Q. And what about your focus reports prior to

1 1992 would not have been true?

2 A. The customer debit -- the customer debit  
3 balances and credit balances.

4 Q. I'm sorry. Why was that?

5 A. Because we weren't reflecting the -- the  
6 customer margin accounts.

7 Q. Okay. Why weren't you reflecting the  
8 customer margin accounts?

9 A. Because we weren't. It wasn't correct. I  
10 said the fraud started -- when I refer to the fraud  
11 starting in '92 --

12 Q. Right.

13 A. -- I was referring to the -- to the split  
14 strike conversion trades.

15 Q. Right.

16 A. Uh-huh.

17 Q. Okay. But why were you not accurately  
18 reporting the margin account activity prior to 1992?

19 A. Because I wasn't.

20 Q. Was there a reason why you didn't do it?

21 A. We didn't want to show the -- the debit  
22 balances. Well, first of all, I'm not 100 percent  
23 sure because you were allowed to net the -- the  
24 debit and credit balances from all of the customer  
25 accounts. Depends upon what the short position is,

1 so I can't really answer you that, that question.

2 Q. Okay. Well, let's take a look at the focus  
3 report; okay?

4 A. Uh-huh.

5 Q. I think we have them from the year '84?  
6 '84.

7 MS. FEIN: It will be seven?

8 MR. SHEEHAN: Seven.

9 (Trustee's Exhibit Number 7 was marked for  
10 identification.)

11 MR. SHEEHAN: You marked that up for me.  
12 Yeah. I guess I should. All right. Thank you.

13 MS. FEIN: Always.

14 MR. SHEEHAN: Yes.

15 Q. (By Mr. Sheehan) All right. You've been  
16 handed Exhibit 7?

17 MS. FEIN: Uh-huh.

18 Q. (By Mr. Sheehan) Exhibit 7, which is the  
19 focus reports which we compiled that are the four  
20 quarterly reports for 1984.

21 A. Uh-huh.

22 Q. And I believe the one at the beginning, I  
23 think they're in reverse order, this is the one at  
24 the beginning. The dates on it if you look at it  
25 says for the period beginning 10-1-84 to 12-31-84.

1 Do you see that? So just sticking with that first  
2 quarterly report, if you would, turn to -- see, take  
3 a look at the page 2 of 29. It's actually -- just  
4 turn the page.

5 A. Right.

6 Q. Down at the very bottom it says number  
7 four, receivables from customers?

8 A. Uh-huh.

9 Q. What is your understanding of what that  
10 would be?

11 A. It would be what the customers owe us.

12 Q. Okay. And then underneath it says  
13 securities accounts, one, cash and fully secured  
14 accounts. Do you see that?

15 A. Uh-huh.

16 Q. What do you understand that to be?

17 A. What it says.

18 Q. Okay. And do you see what the entry is for  
19 that?

20 A. Uh-huh.

21 Q. Zero?

22 A. Uh-huh.

23 Q. Is that correct?

24 A. I don't know. I mean, again, I'd have to  
25 see. I'd have to see what the total debits and

1 credits were of all the customer accounts and how  
2 they were netted out.

3 Q. So it's your understanding it's a  
4 compilation of all of the margin accounts that you  
5 had?

6 A. Right, based upon what the net and short  
7 positions were of the customer.

8 Q. Okay. So it could all net out to zero?

9 A. That I can't tell you because that's not  
10 something that I --

11 Q. All right, all right. Let's go to page  
12 ten. All right. And it's page 10 of 29 and it's  
13 three up from the bottom. It's number five. Do you  
14 see that?

15 A. Uh-huh.

16 Q. It says margin interest. Are you there  
17 with me?

18 A. Right.

19 Q. And what is the entry for that?

20 A. Zero.

21 Q. That's not true; is it?

22 A. Oh, I -- wait a minute. Which item are you  
23 talking about?

24 Q. Talking under revenue, it says number five,  
25 margin interest, and the entry is zero?

1 A. Right. That's what I just said, right.

2 Q. And we just looked at one account where the  
3 margin interest was substantial?

4 A. Uh-huh.

5 Q. So that entry is incorrect; right?

6 A. Again, I don't know how they calculate  
7 that. It's not something that I did.

8 Q. All right. If we go through all of these,  
9 I represent to you that they all are zero --

10 A. Right.

11 Q. -- for both of those entries that we just  
12 reviewed.

13 A. Uh-huh.

14 Q. Okay. And is your answer is you just don't  
15 know why it's zero?

16 A. I don't fill out this report, so I don't  
17 know.

18 Q. Do you ever remember instructing people to  
19 not enter the margin interest?

20 A. That's -- no. I don't remember that.

21 Q. Did they ever actually pay you the margin  
22 interest?

23 A. If the money came out of the account, they  
24 must have.

25 Q. So what do you mean by that? Maybe I'm not

1 understanding you.

2 A. I mean, if the margin interest came out of  
3 the account, you know, it would have been deducted  
4 from the monies they sent in.

5 So, I mean, if there are entries in the  
6 account, you know, margin interest and there were  
7 checks coming into the account, obviously, it would  
8 have been -- it would have reduced, you know, would  
9 have reduced the balance in their account. If  
10 somebody sent me in \$500,000 and we charged them  
11 interest of \$100,000 --

12 Q. Got it.

13 A. -- their balance would have gone down by  
14 100 -- you know, by the \$100,000.

15 Q. So who would have filled out this report,  
16 the focus report, that is?

17 A. During what year? Is this in the '80s?

18 Q. Yeah.

19 A. It would have been filled out by Sylvia  
20 Hendel --

21 Q. Okay.

22 A. -- or Irwin Lipkin. Either one of them.

23 Q. All right. Give me a moment. If we go  
24 back to Exhibit 6 --

25 MS. FEIN: Okay.



1 (Discussion off the record.)

2 MR. SHEEHAN: You're going to have to give  
3 me '84.

4 MS. FEIN: Okay.

5 MR. SHEEHAN: Okay.

6 MS. CHAITMAN: You're looking at 12-31-84?

7 MR. SHEEHAN: Yeah.

8 MS. CHAITMAN: From Exhibit 6?

9 MR. SHEEHAN: Yeah.

10 Q. (By Mr. Sheehan) So looking back at  
11 Exhibit 6, looking at December 31st, 1984 --

12 MS. CHAITMAN: I'm just getting that.

13 MR. SHEEHAN: Okay, sure. Maybe you can  
14 help Mr. Madoff.

15 MS. CHAITMAN: I am.

16 THE WITNESS: Uh-huh, okay.

17 Q. (By Mr. Sheehan) So the ending balance of  
18 that end of year was two million eighty twenty-five.  
19 Do you see that?

20 A. Right, uh-huh.

21 Q. And there does not appear to be any  
22 payments made that year in the 12 months preceding  
23 it?

24 A. Right.

25 Q. So wouldn't there have been interest at the

1 end of '84 that should have been reported for this  
2 account?

3 A. You'd have -- you'd have to look at all of  
4 the accounts. You know, they're netted, so I  
5 can't -- you don't treat just one account. You'd  
6 have to look at the other accounts. He may have had  
7 an offsetting balance in those other accounts and  
8 they're netted.

9 (Discussion off the record.)

10 MR. SHEEHAN: Okay. That's fine. Hang on  
11 one second. Just hang onto it.

12 MS. FEIN: Uh-huh.

13 Q. (By Mr. Sheehan) New topic. Maurice  
14 Cohn --

15 A. Uh-huh.

16 Q. -- who is he or who was he?

17 A. He was a friend of mine, also owned Cohmad  
18 Securities.

19 Q. Were you 50/50 owners of Cohmad Securities?

20 A. No. We had, I think, 24 percent of Cohmad.  
21 My brother had -- I had 15, my brother had nine,  
22 something of that sort.

23 Q. All right. And what was Cohmad Securities?

24 A. It was another broker-dealer.

25 Q. And where did it -- where was it located?

1 A. They were located in my office.

2 Q. Okay.

3 A. We sublet them space.

4 Q. Was it a separate independent brokerage?

5 A. Yes, uh-huh.

6 Q. Okay.

7 A. Through Bear Stearns.

8 Q. Okay. Did Mr. Maurice Cohn have an account  
9 at PLMIS?

10 A. Yes.

11 Q. What was the nature of that account?

12 A. He had a split strike, you know, account  
13 and I'm not sure he had a convertible account as  
14 well. I don't think so. I'm not sure.

15 MR. SHEEHAN: Okay. All right. Why don't  
16 we mark this?

17 MS. FEIN: Okay.

18 MR. SHEEHAN: And let's do these first;  
19 all right?

20 MS. FEIN: Uh-huh.

21 MR. SHEEHAN: Okay.

22 MR. GOLDMAN: Is this 7 or is this 8?

23 MS. FEIN: This is Trustee's 8.

24 MS. CHAITMAN: Thank you.

25 MR. SHEEHAN: Yeah. Mine is.

1 MS. FEIN: It's in there.

2 MR. SHEEHAN: It's in there. It's 13A,  
3 can't miss it. All right. Have to swing this down.  
4 Sorry about that.

5 (Discussion off the record and Trustee's  
6 Exhibit Number 8 was marked for identification.)

7 Q. (By Mr. Sheehan) Mr. Madoff, I've shown  
8 you what has been now marked as Exhibit 8. It's a  
9 series of notes that it actually came out of a  
10 folder and the folder was called MC disbursements.

11 A. Uh-huh.

12 Q. If you look at the first page, they  
13 actually made a photocopy of the folder where it  
14 says that on it and it's IM 001, MC disbursements.  
15 Do you see that?

16 A. Uh-huh.

17 Q. And the pages that follow were in that  
18 folder; okay?

19 A. Right.

20 Q. So take a -- take a look through it because  
21 I'm going to ask you about each of these pages.

22 A. Uh-huh, okay.

23 Q. Okay. Let's go to the first page. And as  
24 always, I'm going to read it into the record as best  
25 I can. Bernie said no --

1 MR. GOLDMAN: Forms.

2 MR. SHEEHAN: What?

3 MS. CHAITMAN: Forms.

4 Q. (By Mr. Sheehan) Forms. Hey, good.

5 Bernie said no forms for a new account or a trade  
6 authorization or tax ID are needed for this account.

7 A. Uh-huh.

8 Q. Do you recognize that handwriting?

9 A. No.

10 Q. Do you remember telling anyone that with  
11 regard to Mr. Cohn's accounts?

12 A. If it says Bernie said, I must have said  
13 something.

14 Q. Okay. Let's go to the next page. It's a  
15 form. Do you recognize the form?

16 A. This one?

17 Q. Yeah.

18 A. No, but I'm assuming that --

19 MS. CHAITMAN: Don't assume, Bernie. If  
20 you know, you should say.

21 THE WITNESS: No.

22 MR. SHEEHAN: If you don't know, don't  
23 know.

24 THE WITNESS: I don't.

25 Q. (By Mr. Sheehan) It's entitled, it

1 purports to be a document entitled name slash ADDR  
2 file maintenance. Does ADDR mean anything to you?

3 A. ADDR?

4 Q. Yeah.

5 A. I don't know.

6 Q. Okay. So you go through this and it speaks  
7 for itself, but it indicates that there's this MC  
8 disbursements?

9 A. Uh-huh.

10 Q. That gives an account number of 1MOO130.  
11 Do you see that up top?

12 A. Uh-huh.

13 Q. All right. And it says at the bottom,  
14 again, the handwriting, I'd ask you to -- it's no  
15 account papers or margin as per BLM.

16 A. Uh-huh.

17 Q. Do you see that down at the bottom?

18 A. Right.

19 Q. Do you recognize that handwriting?

20 A. No.

21 Q. Okay. Let's go to the next entry here.  
22 And this purports to be it looks like note paper  
23 from Cohmad Securities and it has underneath that  
24 Maurice J. Cohn?

25 A. Uh-huh.

1 Q. Do you recognize that handwriting?

2 A. No.

3 Q. Now, it seems to be -- do you see the word

4 Sonny --

5 A. Uh-huh.

6 Q. -- down there?

7 A. Uh-huh.

8 Q. Does that --

9 A. Sonny Cohn.

10 Q. Was that Maurice's nickname?

11 A. Yes.

12 Q. Okay. So, again, it speaks for itself, but  
13 it reads Jodi, dash, revised, underlined twice,  
14 please issue a check payable to Maurice Cohn in the  
15 amount of \$872,730, not \$889,000, debit MC  
16 disbursements and gives the account number. And  
17 then it's got what looks to be initials to the left.  
18 Do you see those to the left of Sonny?

19 A. Yeah.

20 Q. Do you recognize those?

21 A. Is that an initial or is it a number? It  
22 says what looks like --

23 Q. Are we looking at the same one?

24 MS. FEIN: It's this one.

25 THE WITNESS: Oh, this?

1 Q. (By Mr. Sheehan) Yeah. Where it says  
2 Sonny, it looks like a J. Could that be Jodi  
3 Crupi's initial?

4 A. I have no idea.

5 Q. No idea. And then it says you have my  
6 deposit check?

7 A. Uh-huh.

8 Q. What, if anything, does this mean to you?

9 A. I'm not familiar with it, with any of this.

10 Q. All right. When there were deposits and  
11 withdrawals out of Sonny Cohn's account, would you  
12 be involved?

13 A. No. I mean, this looks like somebody said  
14 disbursements. It looks to me like it's just a  
15 bookkeeping procedure that they have for monies in  
16 the account.

17 Q. Let's go to the next page.

18 MR. GOLDMAN: I said unless they want to  
19 be on the transcript, they should tone it down.

20 Q. (By Mr. Sheehan) So the next page, which  
21 is actually for Bates stamp purposes, it's AMF 105.  
22 Again, it appears to be -- you know, it purports to  
23 be a note pad from Cohmad Securities, Maurice Cohn,  
24 dated 6-30-98. And again, it speaks for itself, but  
25 I'll read it. Dear Jodi, dash -- Jodi, by the way,



1 is spelled J-o-d-i -- please issue a check in the  
2 amount of \$500,000 payable to Maurice J. Cohn. As  
3 discussed, debit MC disbursements. Also, please  
4 deposit this check at Chase Bank. A deposit slip is  
5 enclosed. Thanks, Sonny. Do you recognize this to  
6 be Mr. Cohn's handwriting?

7 A. Which page are you on now?

8 Q. It's dated out in the corner 6-30-98.

9 A. Okay. What was your question?

10 Q. I said do you recognize this to be Sonny  
11 Cohn's handwriting?

12 A. You know, not really, but I'm assuming it's  
13 on Cohmad Securities' note pad. So Maurice Cohn,  
14 looks like his personal pad.

15 Q. It says copy to BLM. That's your initials;  
16 right?

17 A. Okay, yeah.

18 Q. All right. Do you ever recall -- do you  
19 recall ever seeing these kind of notes coming to  
20 you?

21 A. I assume so.

22 Q. And then it says this should be done on or  
23 about July 2?

24 A. Yeah.

25 Q. Does July 2 have any significance to you?

1 A. No.

2 Q. Okay. Let's go to the next page.

3 Actually, let me look at these. Maybe we're just  
4 repeating ourselves. Okay. The next two are  
5 similar notes. I'm going to pass over those for the  
6 record. They're AMF 106 and AMF 107. I can ask  
7 about them later, but for our purposes they're the  
8 same. Then we get to the last page of this exhibit.  
9 Let me just ask you a question about that.

10 And it's again a note purports to be from  
11 Maurice Cohn dated 1-9-96. It says Dear Jodi, as  
12 discussed, deposit my check before January 16 so I  
13 can share my winnings with Uncle Sam. Thanks,  
14 Sonny. And then below that it says please mail the  
15 deposit slip receipt to me and gives his name and  
16 address. Do you see that?

17 A. Uh-huh.

18 Q. Do you recall discussing with -- well, let  
19 me rephrase this. Do you have any understanding why  
20 he referred to the deposit as winnings?

21 A. It says winnings with Uncle Sam.

22 Q. Yeah. Share my winnings. Why would he  
23 call winnings --

24 A. Looks like he's referring to Uncle Sam,  
25 what his profits were with the government, with

1 Uncle Sam, the taxes on it.

2 MR. SHEEHAN: Okay. Let's get out the  
3 statements. This is eight?

4 MS. FEIN: It's nine.

5 (Trustee's Exhibit Number 9 was marked for  
6 identification.)

7 Q. (By Mr. Sheehan) Nine. Let's take a break  
8 after this; okay? All right. Take a break after we  
9 go through this one.

10 A. Okay.

11 Q. Or you need one now? It doesn't matter.

12 A. No. I'm fine.

13 Q. You're okay? All right. Oh, it's in my  
14 book; right?

15 MS. FEIN: Yes. This is another  
16 compilation of statements. Because some of them are  
17 harder to read, so we pulled several months. So  
18 they're all for the same account, but the time  
19 period varies.

20 Q. (By Mr. Sheehan) Yeah. The first page is  
21 very blurry, but I think they gets succeedingly  
22 better as we go through them, but this is what the  
23 documents purport to be are account statements for  
24 MC Disbursements, care of Maurice Cohn and it gives  
25 his address as 121 Wall Street. I'm not going to

1 date on the first one. As a matter of fact, I'm  
2 thinking we should just skip it. It's here for  
3 record purposes. What it shows is three checks. Do  
4 you see that?

5 A. Uh-huh.

6 Q. The first page? I'll ask you about this.  
7 And each of them says after the check, it says CW  
8 under all three. What is that?

9 A. Capital withdrawal.

10 Q. And can you make out the total?

11 A. \$55,000.

12 Q. Yes, okay.

13 A. Uh-huh.

14 Q. All right. Now, there's no other entry on  
15 here. No stock?

16 A. Uh-huh.

17 Q. No transactions?

18 A. Right.

19 Q. Just cash out?

20 A. Right.

21 Q. What do you understand this transaction to  
22 be?

23 A. It looks like just like a bookkeeping  
24 account. It doesn't look like it's a transaction  
25 account.

1 Q. Okay.

2 A. Because I don't see any transactions on  
3 here.

4 Q. Were you paying Sonny Cohn for any  
5 services --

6 A. Yes.

7 Q. -- he was providing?

8 A. Uh-huh.

9 Q. What were those services?

10 A. He was -- well, Cohmad Securities was  
11 executing our business on the floor, what's called  
12 dot business because they had dot machines through  
13 Bear Stearns, which we were not a member of the  
14 exchange, you know, so we didn't have those  
15 machines.

16 So they executed business for us, you know,  
17 for my market makers from the dot business. Plus,  
18 Sonny Cohn also brought business into the firm as  
19 well and he also performed other services for the  
20 firm.

21 Q. Just for the record, what's a dot business?

22 A. Dot business is brokerage business that  
23 when we put an order on the floor of the exchange,  
24 it goes down to the specialist post on the exchange.

25 Q. Okay. Just staying with the first page,

1 Mr. Madoff --

2 A. Uh-huh.

3 Q. -- could this be a payment to Mr. Cohn for  
4 those services?

5 A. It could be.

6 Q. All right. Would it be your practice to  
7 use a customer account to make payments like that?

8 A. I'm not sure.

9 Q. Well, in other words, rather than write him  
10 a -- you know, just a check or something else, you  
11 used a customer account and put the money through  
12 the customer account?

13 MS. CHAITMAN: I'm objecting to form.

14 THE WITNESS: No.

15 MS. CHAITMAN: I don't see any evidence  
16 that this is a customer account.

17 THE WITNESS: Yeah. This looks like a  
18 journal, a type of journal account.

19 Q. (By Mr. Sheehan) Well, I think the number  
20 at the top, 1-01329-30, is a customer account  
21 number.

22 A. It's just referring -- yeah, but that's  
23 referring to his -- his customer account number; but  
24 if there's no transactions on there, this looks like  
25 a journal account.

1 Q. What's a journal account?

2 A. When -- you know, when money is flowing  
3 through the account, either we're receiving in  
4 checks or sending out checks. It says MC  
5 Disbursements, so that means that we're paying him  
6 money.

7 Q. Right.

8 A. They're just using -- those books are like  
9 a bookkeeping account. If there's no transactions  
10 on it, it's not really an account where we're buying  
11 and selling securities for them.

12 Q. So if you're just disbursing money to them,  
13 why would you use a customer account for that?

14 MS. CHAITMAN: Objection to form.

15 THE WITNESS: I have no idea.

16 MR. SHEEHAN: Okay.

17 THE WITNESS: I mean, that's not something  
18 that I'm familiar with.

19 Q. (By Mr. Sheehan) Okay. Because it does  
20 say -- you see on this, it also says or when I asked  
21 you, look down -- actually, we can stick with the  
22 first page. It's so blurry, but we can read it.  
23 See where it says on the left-hand side under the  
24 name and address?

25 A. Uh-huh.

1 Q. You see the words long and short?

2 A. Right.

3 Q. Don't those always appear on a customer  
4 statement?

5 A. Yeah. Well, they're using a format of the  
6 customer account it looks like, but it's not --

7 Q. Right.

8 A. But there's no transactions on there, so --

9 Q. All right. So let's -- let's go in four  
10 pages to April 30, 1989. And what it's showing is  
11 the balance forward showing it as a debit of  
12 \$734,000. Do you see that?

13 A. Yes.

14 Q. And the initial, then there's three checks?

15 A. Uh-huh.

16 Q. Which brings the total up to \$892,000?

17 A. Right.

18 Q. What was the purpose of keeping this debit  
19 balance running?

20 A. Obviously, it looks like from the checks  
21 that were issued to him.

22 Q. Right. Again, there's no transactions  
23 here; are there?

24 A. No.

25 Q. Now, we go to the next page if you would,



1 which is 6-30-89. The balance is then brought up to  
2 \$900,000, two more checks and it's now a million  
3 225. Do you see that?

4 A. Uh-huh.

5 Q. And, again, no transactions; right?

6 A. Right.

7 Q. So we're not going to keep doing this. All  
8 right. Let's go to the one -- next one is 4-30-95,  
9 the one that looks like this, Mr. Madoff.

10 A. Uh-huh.

11 MS. FEIN: I have it over here.

12 Q. (By Mr. Sheehan) All right. So this shows  
13 that the new balance as of April 30, '95 is six  
14 million -- or 16 million. I'm sorry. \$16,754,000.  
15 Do you see that?

16 A. Yeah.

17 Q. What was -- what were you paying Mr. Cohn  
18 \$16 million for?

19 A. \$16 million for?

20 Q. Yeah. It says your cash adds up to new  
21 balance of \$16,754,393. There's not a single  
22 transaction and the only thing is checks going out  
23 to him totaling that amount of money. So what were  
24 you giving him \$16 million for?

25 A. Well, first of all, Maurice Cohn was

1 getting a -- a payment for the accounts that he  
2 refers -- like all his salesmen, Cohmad was  
3 referring clients to us that we were doing -- when  
4 was this? In '95 that we were doing, you know,  
5 arbitrage transactions. They were referring clients  
6 to us and he was getting a fee, a percentage.

7 I don't remember exactly what the fee was,  
8 whether it was, you know, two percent or whatever it  
9 is of all of their customer, you know, balances in  
10 their account. So I don't know. Sixteen million  
11 seems like a large amount, but I don't know; but  
12 that could have been, you know, based upon all of --  
13 you know, all of their customers for -- he had a  
14 whole bunch of salesmen at Cohmad.

15 Q. I'm not so sure I understood that, so let  
16 me ask you a question.

17 A. In other words, Cohmad referred clients to  
18 us and they got a -- he got a fee based upon the  
19 balances just like the woman by the name of Sonya  
20 Cohn. He had salesmen that got -- that referred  
21 hedge fund business to us and so on and he got a  
22 percentage, a referral fee for that.

23 Q. Based on the balance?

24 A. The amount of monies that the clients had  
25 sent in in their accounts to manage.

1 Q. If the --

2 A. It was a referral fee.

3 Q. I understand.

4 A. Uh-huh.

5 Q. If the clients took the money out, would  
6 the amount that you paid him go down?

7 A. Would have been -- would have been debited,  
8 yeah. Would have been deducted.

9 MR. SHEEHAN: Okay. Take a break here.

10 THE VIDEOGRAPHER: Going off the record.

11 The time is 12:33 p.m.

12 (A recess was taken.)

13 THE VIDEOGRAPHER: Back on the record.

14 This begins disc number three. The time is  
15 12:50 p.m.

16 Q. (By Mr. Sheehan) Mr. Madoff, do you  
17 remember earlier today I was asking you about what I  
18 characterized as a 302 statement? Do you remember  
19 that?

20 A. Yes.

21 Q. Okay. These are statements that are  
22 prepared by the FBI following the interview such as  
23 the one they had with you?

24 A. Uh-huh.

25 Q. I'm stating that not for the truth of it

1 but just for context.

2 MR. GOLDMAN: I don't think it's the 302;  
3 was it?

4 MR. SHEEHAN: They call it 302s.

5 MR. GOLDMAN: It was a 201.

6 MR. SHEEHAN: No. It's a 302. If  
7 anything today that I'm pretty sure of.

8 MR. GOLDMAN: Okay.

9 MR. SHEEHAN: I'm not arguing with you,  
10 Peter.

11 Q. (By Mr. Sheehan) So it's December 16th,  
12 19 -- 2008?

13 A. Uh-huh.

14 Q. It's several days after the arrest, and  
15 you're telling them as I understood what you said  
16 earlier how the fraud came about; is that correct?

17 A. Correct.

18 Q. Right. Do you remember telling them that  
19 it started in the 1960s?

20 A. No.

21 Q. Do you know that the 302 statement says  
22 that not only once but three different times that  
23 you said it started early?

24 MS. CHAITMAN: Do you have the 302  
25 statement?

1 MR. SHEEHAN: I can't get it.

2 THE WITNESS: I never would have said  
3 that.

4 MR. SHEEHAN: I'm in the process of trying  
5 -- let me explain this for the record. I'm sorry,  
6 Mr. Madoff. I'll give you a chance. That is, that  
7 we went down to look at it, Helen, and they let us  
8 review it and then I asked for a copy and they  
9 refused. What we've done is we've prepared what's  
10 called a Touhy letter to request it and they have  
11 that under consideration. The U.S. Attorney moves  
12 at its own speed, so I don't have it.

13 I am attempting to get it. In the  
14 meantime you can do what I did and that is ask to  
15 see it, and they will accommodate you and let you  
16 read it; but, unfortunately, they will not give us a  
17 copy as yet. I don't see any reason why they  
18 wouldn't because the case is essentially over from a  
19 criminal perspective.

20 And 302s are, you know, given out as Brady  
21 statements and everything else, so but I don't have  
22 it here and I apologize for that, but I wish I did.

23 THE WITNESS: Let me clear something up.  
24 During the proffer agreement, the proffer meeting,  
25 they asked me to explain the history of the firm;

1 okay?

2 MR. SHEEHAN: Right.

3 THE WITNESS: And at that point I said we  
4 started in 1960. That was the only reference that  
5 was ever made to 1960 was that their firm started in  
6 1960, and that's when I started doing business. And  
7 then I gave a history of the firm from 1960. And,  
8 you know, I said I started, you know, with -- I sold  
9 new issues to clients. And the new issue market  
10 collapsed and didn't work out.

11 That's when I got into the fact that I had  
12 to borrow \$30,000 to make my customers whole, but  
13 there was never any discussion of fraud starting in  
14 1960 because it didn't. So I never would have made  
15 that statement. The only referral to 1960 was when  
16 the firm started.

17 Q. (By Mr. Sheehan) So when the FBI wrote  
18 down that you told them the fraud started in the  
19 '60s, they were wrong?

20 A. I said the firm started in the '60s, not  
21 the fraud started in the '60s.

22 Q. Well, the FBI wrote down that the fraud  
23 started --

24 A. Well, I can't help what they wrote down,  
25 but --

1 Q. Well, they wrote down that you had borrowed  
2 the \$30,000 because your business had failed.

3 A. No. I didn't say the business had failed.  
4 What I said to them was, and I remember this very  
5 clearly because this was in the book and I told  
6 Diana Henriques, what happened was the firm started  
7 in 1960. Sometime in 1962, I believe it was, I -- I  
8 sold two new issues to a handful of customers. They  
9 were actually -- most of them were my relatives.

10 And that was then the new issue -- with  
11 the Cuban Missile Crisis happened in '62, the new  
12 issue market collapsed. Remember, the tape ran  
13 until like 9:00 o'clock at night, you know, at that  
14 time, the ticker tape. The new issue market  
15 collapsed and the underwriters, the two underwriters  
16 of the new issues that were supposedly in there  
17 making a mark and supporting the issue, you know,  
18 walked away.

19 So there was no liquidity in those stocks,  
20 so the stocks -- these stocks came out at \$2 a  
21 share. They went down to one bid, two offer. That  
22 was the quote. So the customers theoretically lost,  
23 you know, 50 percent of their money. Then there was  
24 -- the total investment that they had made was  
25 \$30,000. I felt, you know, guilty because of the

1 fact that, you know, they bought the stock because I  
2 told them to buy the stock. It was the first time I  
3 ever did retail business with these clients.

4 The capital of the firm -- so I had to  
5 come up with \$30,000. I didn't have to. I chose to  
6 give the customers -- buy the customers back their  
7 stock at the offering price, \$2 a share, which is  
8 what it was initially sold to them at. That market  
9 was one-two, which is a very wide spread; but that's  
10 the way those stocks traded, you know, during that  
11 period of time.

12 So because I decided I wanted to take the  
13 customers out, buy their stock back at \$2 a share,  
14 it cost me \$30,000. And that would have used up all  
15 the capital of the firm, so I borrowed \$30,000 from  
16 my father-in-law to pay them back. That was the  
17 whole issue with that.

18 That's when I said to you that when the  
19 SEC came in to do an examination at a much later  
20 date and they saw that I did that, that was when  
21 they said to me -- as a matter of fact, the  
22 examiners said Bernie, you know, you didn't have to  
23 buy this stock back from the customers.

24 You never guaranteed them anything. And I  
25 said I know. I told them exactly what I just said



1 now and I felt guilty about it. And, you know, I  
2 made a decision to do that. They said, well, you  
3 know, if you're going to keep on doing this, you're  
4 going to run out of money. You know, they sort of  
5 like made a joke out of the whole thing, but there  
6 was never -- that was the whole episode with the --  
7 with the \$30.

8 And then Diana Henriques in her -- when  
9 she wrote the book, which I was really annoyed at  
10 her about and I spoke to her about that, she said,  
11 well, I really mischaracterized it. You know, they  
12 said that -- what did she say? That I did things  
13 that I really didn't have to do or something of  
14 that, which was true. I didn't have to do that, you  
15 know. She thought it was like foolish of me to do  
16 that.

17 Q. You started the retail business, again, in  
18 the '60s; didn't you?

19 A. No. I mean, you know, after that issue  
20 with the new issue business, I basically started  
21 just doing arbitrage transactions. I had a couple  
22 of -- a couple of customers that -- one was the name  
23 of Steinberg. They were relatives of my -- clients  
24 of my father-in-law.

25 Q. Didn't you lose the money again?

1 A. No.

2 Q. Didn't you then start the Ponzi scheme in  
3 the '60s?

4 A. No.

5 Q. Do you recall telling the FBI that it began  
6 -- it really started in earnest in the '70s?

7 A. No.

8 Q. And that it grew much larger in the '80s?

9 A. No.

10 Q. So all those things they wrote down were  
11 wrong?

12 A. I certainly never said that.

13 Q. So they're lying?

14 A. I won't say they're lying. Maybe they  
15 misunderstood me. I don't know.

16 Q. They wrote it down, declarative statements,  
17 started in the '60s, '70s and '80s.

18 A. No.

19 Q. So they made that up?

20 A. I'm not saying they made it up. I don't  
21 know what they -- how they interpreted. You know, I  
22 --

23 Q. What's to interpret? You either started  
24 the fraud or you didn't.

25 A. I didn't. So I don't know why they would

1 say it. I may have been referring to what -- what  
2 business I did, you know. They asked me when did I  
3 start the arbitrage business and, you know, I told  
4 them, you know, what I started doing, when I started  
5 doing the market making business and so on.

6 Q. Mr. Madoff, December 16th you're talking to  
7 the FBI and the U.S. Attorney?

8 A. Uh-huh.

9 Q. You told us earlier you were telling the  
10 truth?

11 A. Right.

12 Q. Now is the time to tell us the truth.  
13 Again, the fraud started in the '60s and '70s just  
14 like you told the FBI?

15 A. I never told the FBI that.

16 Q. So they're lying?

17 A. Characterize it any way you want. I'm just  
18 saying --

19 Q. Well --

20 A. -- I never said that to them.

21 Q. -- let me ask you something else. You lied  
22 to Denny Chin; didn't you?

23 A. To Denny Chin, no.

24 Q. Yeah, the judge. When you allocuted, you  
25 lied?

1 A. Hmm?

2 Q. You lied to Judge Chin during your  
3 allocution?

4 A. No, no.

5 Q. You told him nothing happened after 1992.  
6 That's a lie?

7 A. I didn't tell him nothing happened after  
8 '92.

9 Q. You said the fraud started at your  
10 allocution, you said it started --

11 A. At '92.

12 Q. Ms. Chaitman quotes it all the time. You  
13 said it started in 1992?

14 A. Correct.

15 Q. You've testified here that it started  
16 earlier than that with backdated trading and other  
17 activities for the big four?

18 A. I said the Ponzi scheme, that's when it  
19 started, in 1992. I never -- didn't say that there  
20 were backdating of trades prior to that. I said  
21 that.

22 Q. Didn't you want to give Judge Chin the  
23 impression that you were clean as a whistle up until  
24 1992?

25 A. No.

1 Q. So you're swearing here today you never  
2 lied to Judge Chin?

3 A. No.

4 Q. All right. Want to think about that?

5 A. Yeah. I'm telling you that.

6 Q. All right.

7 A. I'm telling you that they asked me when the  
8 Ponzi scheme started, you know, and I said the Ponzi  
9 scheme started in 1992.

10 Q. But --

11 A. The backdating of trades never came up with  
12 Denny Chin.

13 Q. Mr. Madoff, for the last 16 years of your  
14 professional life by your own admission you lied for  
15 a living; isn't that true?

16 A. For the last 16 years, yeah.

17 Q. Yeah. You lied for a living?

18 A. Yeah.

19 Q. Right. But now we're supposed to believe  
20 that you're telling us the truth?

21 A. You're asking me now, I have nothing to  
22 lose now.

23 Q. Aren't you trying to rehabilitate yourself?

24 A. No.

25 Q. You're trying to make everybody think that

1 you were a good guy until '92 until the big four put  
2 the screws to you?

3 A. That's correct.

4 Q. Yeah. But that wasn't true; was it?

5 A. No. It was true.

6 Q. You were phony in the '80s?

7 A. No. It's not true.

8 Q. So David Kugel, Annette Bongiorno, the FBI,  
9 everybody is lying except you?

10 A. You make your own decision. I'm telling  
11 you --

12 Q. I have.

13 A. All right. So what can I tell you?

14 Q. All right.

15 A. We have a right to disagree.

16 Q. So someone who lies for a living for  
17 16 years wants us to believe what he's saying, but  
18 other people whose freedom was at risk just like  
19 yours told the truth?

20 MS. CHAITMAN: Objection to form.

21 THE WITNESS: I can't respond to that.

22 MR. SHEEHAN: All right. I'm done.

23 MS. CHAITMAN: Mr. Madoff --

24 MR. GOLDMAN: You were lying to us. You  
25 said an hour.

FURTHER EXAMINATION

BY MS. CHAITMAN:

Q. The U.S. Attorney accepted your plea that the fraud began in 1992; is that right?

A. As far as I know.

Q. And can you tell us the circumstances of the U.S. Attorney stating in your presence that he had no evidence that the fraud began before 1992?

A. My attorneys came in to me and told me that when they were trying to determine my forfeiture over what the forfeiture settlement should be, how much money they should leave my wife, my baby, because it really involved my wife, they originally came in and said they were going to -- they were, you know, going to leaving her with \$100,000 or something of that sort.

And I said no. I said that's -- if you're going to leave her \$100,000, I'm going to go to trial. You know, I'm not going to accept that. So they then came back. Ike Sorkin came back and Peter Chavkin into the room and said to me that now the U.S. Attorney, you know, in New York interceded and said that they have -- they have no evidence that the fraud started prior to what I said in 1992, so they were going to settle on \$2,500,000. That was

1 what the U.S. Attorney said.

2 Q. And the \$2,500,000 represented what?

3 A. Represented my homes that were bought in  
4 1980, 1983, and it was part of the assets of the  
5 hundred million dollars worth of assets that Ruth  
6 volunteered to turn over to the -- to the U.S.  
7 Attorney.

8 Q. Okay. So just to be clear, am I correct in  
9 saying that Ruth offered to turn over \$100 million  
10 in assets?

11 A. Right.

12 Q. But she wanted to keep two-and-a-half  
13 million?

14 A. Well, she didn't pick the Number  
15 2-and-a-half million dollars. She just said that,  
16 you know, she wanted enough money to live on. And,  
17 you know, and they asked me -- you know, they came  
18 to tell me what was I willing to accept? And I said  
19 I was certainly not willing to accept \$100,000 of  
20 \$100 million of assets.

21 And they went back and forth and then they  
22 came back in and said the U.S. Attorney said he has  
23 no evidence that the fraud started earlier than what  
24 I had said. So, therefore, he is -- they leave the  
25 two-and-a-half million dollars.



1 Q. Okay. And, in fact, you're aware that  
2 Frank DiPascali pled after he was indicted, he pled  
3 to --

4 A. Right. From what I read, you know, in the  
5 -- in the newspapers and what I was told was that he  
6 -- he stated in front of the judge that the fraud  
7 started in '92.

8 Q. Okay.

9 A. It started in the '90s, he said. And then  
10 at a later date I guess as part of his plea  
11 agreement he said, well, it may have started in the  
12 late '80s, he wasn't sure, '92, you know, but that  
13 was --

14 Q. But he testified that it was with a split  
15 strike?

16 A. Yes.

17 Q. Okay. Now, do you think that you -- do you  
18 have any reason to believe that your prison sentence  
19 would have been longer if you had told the U.S.  
20 Attorney that you started the fraud earlier than  
21 1992?

22 A. What is the question?

23 Q. Do you have any reason to believe that your  
24 criminal sentence would have been longer if you had  
25 told the judge, Judge Chin, in your plea that the

1 fraud began earlier than 1992?

2 A. No.

3 Q. You understand, don't you, that SIPC saves  
4 money by saying the fraud began in 1960? Do you  
5 understand that?

6 A. No. I'm not really --

7 Q. Well, do you understand that SIPC is  
8 required to insure customer accounts up to \$500,000  
9 per account?

10 A. Yeah, uh-huh.

11 Q. And do you understand that in this case Mr.  
12 Picard was successful in persuading the courts that  
13 the customers should not be credited with any  
14 appreciation because he claimed that from the 1960s  
15 on you never purchased any securities?

16 A. Right.

17 Q. So SIPC has saved well over \$1 billion by  
18 virtue of the allegation that the fraud began in  
19 1960.

20 A. Okay.

21 Q. Did you save any money by virtue of --

22 A. No.

23 Q. -- claiming that the fraud began in 1992?

24 A. No.

25 Q. Now, Mr. Sheehan made the point that in the

1 1980s you refused to give your customers electronic  
2 access because you were not doing the trades  
3 reflected on the convertible arbitrage customer  
4 statements. Was electronic access available at all  
5 in the industry in the 1980s?

6 A. No.

7 Q. If electronic assess had been available in  
8 the 1980s, would it have been available to allow  
9 customers to access the over-the-counter market?

10 A. No.

11 Q. In fact, to this day is there to your  
12 knowledge any electronic access via retail customer  
13 to the over-the-counter market?

14 A. First of all, let me explain to you what  
15 electronic access is. Electronic access has nothing  
16 to do with the market. Electronic access allows a  
17 customer to get his confirmations and his statements  
18 electronically through DTC. DTC put in a system  
19 called the DTC ID system, which was basically  
20 designed for institutions.

21 ID stands for institutional, you know,  
22 something or other system. So rather than have the  
23 customer get confirmations, you know, by sending out  
24 a statement or a confirmation, you know, like we  
25 would do, the customer could electronically get the

1 information directly from DTC. The only ones that  
2 really did that were the smaller hedge funds who  
3 really didn't have operations departments and so on.  
4 In order for them to save money, they allowed their  
5 customers to get electronic access.

6 Quite frankly, you know, most firms would  
7 not give anybody electronic access because you were  
8 subjecting your computer systems to people to get in  
9 there, you know, through fraud, like maybe cyber  
10 things like people are having problems today with  
11 their banking and so on. So, quite frankly, I would  
12 never allow electronic access into my system because  
13 our system has, you know, a huge amount of  
14 proprietary information available.

15 And, quite frankly, even within DTC the  
16 industry, you know, had problems with it because the  
17 DTC, the same reason that an accounting firm that  
18 wants to see what the firm has in their DTC  
19 inventory, DTC would not give it to that. They have  
20 to give it to a regulator, but they don't have to  
21 give it to an accounting firm and they don't give it  
22 to an accounting firm.

23 Q. Now, in the 1980s what was the volume of  
24 convertible bond trading that you did through Bear  
25 Stearns?

1           A. I couldn't tell you, but it was  
2           substantial. We did convertible -- we were one of  
3           the largest market makers in convertible securities  
4           in the country. So we were doing -- and, you know,  
5           and again, convertible securities is not only  
6           convertible bonds. You know, it's convertible  
7           preferreds, units, warrants, rights. There's -- you  
8           know, and we participated in all of -- all of that.

9           And as a matter of fact, we ran an ad in  
10          the Wall Street Journal in 19 -- I guess it was  
11          around '83 or '84, whatever the break-up was that we  
12          made markets in all the telephone issues. And we  
13          were one of the largest market makers doing the  
14          arbitrage in the convertible securities.

15          Q. Now, Mr. Sheehan was questioning you --  
16          excuse me -- about Mr. Blecker's statements where it  
17          appeared that fractional shares were credited to his  
18          account before you actually purchased the  
19          securities?

20          A. Uh-huh.

21          Q. Now, first I want to clarify something.  
22          Mr. Sheehan was asking you using David Kugel as an  
23          example whether David Kugel was deprived of  
24          compensation on a convertible arbitrage transaction  
25          that he might have done because you then took those

1 securities and sold them to your investment advisory  
2 customers.

3 Am I correct in saying that they were  
4 completely separate transactions? In other words,  
5 David Kugel was a trader. He would do a transaction  
6 and he would generate potentially a profit or a  
7 loss?

8 A. Correct.

9 Q. But he would acquire securities; is that  
10 right?

11 A. Uh-huh.

12 Q. And then they became firm securities?

13 A. It depends. Sometimes they did. Well,  
14 they were always firm securities because, you know,  
15 they were firm securities while he was -- you know,  
16 while he was a market maker also; but they may have  
17 been in the market making, his market making account  
18 as opposed to the firm's investment account or  
19 trading inventory account.

20 Q. And then would you then turn around and  
21 take some of those securities and sell them to the  
22 investment advisory customers after David Kugel had  
23 completed his transaction?

24 A. That's correct.

25 Q. So you're selling those securities or

1 fractions of those securities to the investment  
2 advisory customers. Was it a completely separate  
3 transaction from anything David Kugel could have  
4 done beforehand?

5 A. That's correct.

6 Q. Okay. Now, can you explain why a  
7 fractional share -- and, of course, we don't have --  
8 if you could look at this first, this document? No.  
9 This is not it. Hold on. I just want to find  
10 the -- this is not -- hold on one second. I'm  
11 showing you Exhibit 1, Trustee's Exhibit 1. If  
12 you'd look on the second page of that?

13 A. Oh, before -- I want to -- I want to  
14 address this FBI issue again.

15 Q. Go ahead. You can.

16 A. And I stated this before today. During the  
17 proffer agreement when I was discussing how we did  
18 our business and I was talking to you about what I  
19 -- how I did customer business, they asked me did  
20 you ever short stock to a customer? You know, and I  
21 said, of course, I shorted stock to a customer at  
22 times, you know. I said that was what market makers  
23 did. You know, they short stock to the customer.

24 And they said you mean you sold stock to a  
25 customer that you didn't own? And I said -- and I

1 looked at, you know, the SEC who was sitting there  
2 and everyone in the room and I said wait a minute.  
3 I said are you asking me -- you know, you're acting  
4 as if there's something wrong with me shorting stock  
5 to a customer, selling stock to -- and now, of  
6 course, the FBI has no clue with what the markets  
7 work, you know.

8           So they made a big issue of you sold stock  
9 to a customer that you didn't own. And as a matter  
10 of fact, I turned to the SE -- two people from the  
11 SEC there and I said listen, guys, help me out here.  
12 I said for some reason you're acting surprised that  
13 a market maker sold stock short, you know. And we  
14 went through that whole routine. Now, whether for  
15 some reason the SEC determined that by me selling  
16 stock to a customer that I didn't own, that that was  
17 a fraud.

18           Q. You mean the SEC or the FBI?

19           A. The FBI. But no one answered anything. I  
20 said -- everyone like was -- the SEC was very  
21 embarrassed because they were sitting there. They  
22 never opened up their mouth during this whole  
23 proffer agreement. And then I -- you know, I  
24 conceded and started saying yes, market makers can  
25 sell stock short to a customer and so on. So if the



1 FBI who was not professional sitting in a room and  
2 listening to this going back and forth because the  
3 U.S. Attorney was the one -- Marc Litt was the one  
4 that was saying you mean you sold stock to a  
5 customer that you didn't own as if like this was  
6 something wrong.

7 And I started to get annoyed at him  
8 because they said -- you know, it was almost like  
9 what is this? Like a joke? You all of a sudden  
10 this is -- you have professionals in here, the SEC,  
11 and you're acting -- you're acting as if there's  
12 something wrong with that? I said that's what  
13 market makers do.

14 Now, if the FBI interpreted that as being  
15 a fraud because that's what the SEC -- that's what  
16 the U.S. Attorney was sort of like insinuating. If  
17 that's how they -- why they started writing this  
18 down, I don't know, but clearly I never, you know,  
19 made that statement.

20 Q. Okay. Turning to the third page of  
21 Trustee's Exhibit 1 --

22 A. And don't they record this conversation  
23 there? Isn't that -- they don't record that?

24 MR. GOLDMAN: They take notes. Hopefully,  
25 they take notes.

1 Q. (By Ms. Chaitman) Turning to page three of  
2 Trustee's Exhibit 1 --

3 A. And by the way, Picard was at that meeting,  
4 wasn't he, at the proffer agreement?

5 MR. SHEEHAN: No. He was not.

6 THE WITNESS: I'm pretty sure he was. No?

7 MR. SHEEHAN: Well, you would be wrong  
8 about that, too, Bernie.

9 THE WITNESS: Oh, okay. Somebody was  
10 there from the Trustee.

11 MR. SHEEHAN: George Stamboulidis.

12 THE WITNESS: Oh, okay.

13 Q. (By Ms. Chaitman) Again, my third try at  
14 this.

15 A. Yes, right.

16 Q. Mr. Sheehan made a great deal about the  
17 fact that on September 30th, 1986 on Mr. Blecker's  
18 statement you reflected a journal entry of \$55.13  
19 for TRW, Inc. fractional shares. Do you see that?

20 A. Yes.

21 Q. Okay. And then Mr. Sheehan pointed out is  
22 that it wasn't until the November 30th, '86  
23 statement that you show a long position in TRW  
24 shares, and it says received. Is it possible that  
25 the fractional shares were actually acquired on

1 September 30th but not received until November 7th?  
2 That would be a month and seven days.

3 A. The -- again, I don't know how they handled  
4 the fractional shares. The receive and deliver that  
5 appears on a statement is -- is an entry that is  
6 either -- that's the position is closed out. In  
7 other words, it means that either the conversion was  
8 completed and when it got entered into the customer  
9 account.

10 The actual conversion might have been  
11 completed, you know, a month after we did the  
12 transaction; but, you know, it actually got  
13 journaled into the customer account at a later date  
14 when it gets moved into from the operations side,  
15 you know. For example, if we -- if we sent it to a  
16 bank to be converted, all right, they may -- they  
17 may -- the conversion may have come through a month  
18 after they put it into conversion.

19 They may have not sent it to us, you know,  
20 until two weeks after that. That's a matter of, you  
21 know, of the processing. So how the journal, you  
22 know, gets or if, in fact, my office put through the  
23 distribution of the fractional share into the  
24 customer's account when the transaction was set up  
25 because they did that because they know that that's

1 what they're going to get on the date rather than  
2 later on. I don't know what the process is, but it  
3 doesn't mean anything.

4 MS. CHAITMAN: Okay. I have no other  
5 questions.

6 MR. SHEEHAN: Just one or two more.

7 FURTHER EXAMINATION

8 BY MR. SHEEHAN:

9 Q. Ms. Chaitman just now asked you about the  
10 U.S. Attorney, and the U.S. Attorney at your plea  
11 said that the fraud started from 1992 forward. Do  
12 you remember that question?

13 A. She asked me what?

14 Q. That the U.S. Attorney and you were on the  
15 same page that the fraud started in '92 and went  
16 forward. Do you remember that?

17 A. I just --

18 Q. Well, the record speaks for itself. Do you  
19 have any recollection of it?

20 A. The only thing I recollect was that Ike  
21 Sorkin and Peter Chavkin came in. This was when I  
22 was in the jail in New York and said to me that --  
23 they said that the U.S. Attorney said that he had no  
24 evidence that the fraud started before I claimed  
25 whatever the date was, and that's why he decided to

1 make the settlement of two-and-a-half million  
2 dollars. That's my recollection.

3 Q. Just to complete the record then, this is  
4 your allocution that was actually marked as D  
5 Exhibit two at your deposition on December 20, '16.

6 A. Uh-huh.

7 Q. And on page 31 it reads, this is the Court  
8 speaking, does the government believe Mr. Madoff's  
9 admission to cover the elements of the crime of each  
10 count? Mr. Litt, who I think you previously  
11 identified as the prosecutor, answered yes, your  
12 Honor.

13 The government does not entirely agree with  
14 all of the Defendant's description of his conduct.  
15 However, the government does believe that his  
16 allocution does cover each of the elements of the  
17 charged defenses. The Court: Would you summarize  
18 what the government's evidence would be if the  
19 Defendant were to go to trial?

20 Mr. Litt: Yes. If this case proceeded to  
21 trial the government would have proven through  
22 testimony and evidence beyond a reasonable doubt all  
23 the facts set forth in the criminal information. In  
24 the summary the government would have proven, colon,  
25 the Defendant operated a massive Ponzi scheme

1 through his company, Bernard L. Madoff Investment  
2 Securities, beginning at least as early as the  
3 1980s. Over the decades working from his New York  
4 City office Madoff solicited and caused others to  
5 solicit prospective clients to open accounts with  
6 his companies.

7 His clients included individuals,  
8 charitable organizations, trusts, pension funds and  
9 hedge funds, among others, and those clients were  
10 also his victims. Let me stop reading there. I  
11 think it speaks for itself.

12 A. Well, he's saying in the 1980s; right?

13 Q. Yes.

14 A. Not saying 1962.

15 Q. He said at least the 1980s, so --

16 A. Okay. Well, that's the 1980s. Now, you  
17 know --

18 MR. GOLDMAN: Bernie, there's no question.

19 MR. SHEEHAN: No question.

20 THE WITNESS: Okay.

21 FURTHER EXAMINATION

22 BY MS. CHAITMAN:

23 Q. But Mr. Madoff, didn't the fraud, in fact,  
24 start in the 1980s?

25 A. No.

1 MS. CHAITMAN: Okay. I have no further  
2 questions.

3 MR. SHEEHAN: I'm done.

4 MS. CHAITMAN: We're done.

5 MR. GOLDMAN: Okay. I've only got about  
6 two hours worth, so --

7 MR. SHEEHAN: That's one thing I know is  
8 not true. A lot of things I don't know is true.  
9 That I know is not true.

10 THE VIDEOGRAPHER: This concludes the  
11 deposition. Going off the record at 1:24 p.m.

12 (Reading and signing of the deposition by  
13 the witness was waived and the deposition was  
14 concluded at 1:24 p.m.)

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C E R T I F I C A T E

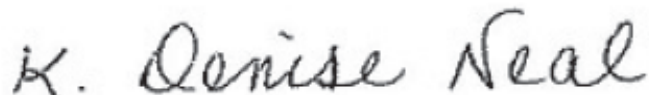
NORTH CAROLINA:

GUILFORD COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 211 through 384 represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.

I have no written contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case.

This, the 10th day of May, 2017.



K. Denise Neal, RPR  
Registered Professional Reporter  
Notary Public No. 200517500101



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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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